U.S. Department of Transportation
Office of the Secretary of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, SE
Washington, DC 20590

August 10, 2010

Mr. Joe Nix
Senior Transportation Planner
Alabama Department of Transportation
Bureau of Transportation Planning and Modal Programs
1100 John Overton Drive
Montgomery, Alabama 36110

Dear Mr. Nix:

In response to your inquiry, please be advised that the Department of Transportation (DOT) has reviewed the Unified Certification Program (UCP) your agency submitted to us on behalf of the Alabama Department of Transportation and other recipients of DOT financial assistance in Alabama. Your most recent submission has satisfactorily incorporated our earlier comments.

Consequently, I am informing you, on behalf of the DOT Office of the General Counsel, that the Alabama UCP has been approved, as provided by the DOT disadvantaged business enterprise regulations (49 FCR Part 26).

Please remember that any inconsistency or ambiguity in the UCP agreement shall be resolved by giving precedence to the following in this order: 49 CFR Parts 23 and 26, USDOT directives, the DBE program as approved by DOT, and applicable Alabama statutes and regulations.

DOT looks forward to working with you as you continue to implement the DBE program and the Alabama UCP.

Sincerely,

Robert C. Ashby
Deputy Assistant General Counsel
for Regulation and Enforcement

ALABAMA UNIFIED CERTIFICATION PROGRAM (ALUCP)

AGREEMENT

We the undersigned parties agree to be bound by the terms and conditions of the Alabama Unified Certification Program submitted to the United States Department of Transportation (USDOT) on June 4, 2008.

Alabama Department of Transportation

Title:

Date

Alabama State Port Authority

Title: Director & CEO

6/26/08

Date

Birmingham Airport Authority

Title:

Date

Huntsville Airport Authority

Title:

Date

The Wave Transit System

Title:

Date

ALABAMA UNIFIED CERTIFICATION PROGRAM (ALUCP)

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_____ _____

Alabama Department of Transportation — Date

Title:

_____ _____

Alabama State Port Authority — Date

Title:

_____ _____

Birmingham Airport Authority — Date

Title:

_____ _____

Huntsville Airport Authority — Date

Title:

The Wave Transit System — 6/23/08 — Date

Title: General Manager

ALABAMA UNIFIED CERTIFICATION PROGRAM (ALUCP)

AGREEMENT

We the undersigned parties agree to be bound by the terms and conditions of the Alabama Unified Certification Program submitted to the United States Department of Transportation (USDOT) on June 4, 2008.

_____	_____
Alabama Department of Transportation	Date
Title:	
_____	_____
Alabama State Port Authority	Date
Title:	
Birmingham Airport Authority	6/10/2008
Title: Senior V.P., Finance & Adm	Date
_____	_____

Paul Kelly
Huntsville Airport Authority
Title: Director, Finance + Admin

6/16/08
Date

The Wave Transit System
Title:

Date

ALABAMA UNIFIED CERTIFICATION PROGRAM (ALUCP)

AGREEMENT

We the undersigned parties agree to be bound by the terms and conditions of the Alabama Unified Certification Program submitted to the United States Department of Transportation (USDOT) on June 4, 2008.

Alabama Department of Transportation

Title:

6/16/08

Date

Alabama State Port Authority

Title:

Date

Birmingham Airport Authority

Title:

Date

STATE OF ALABAMA
USDOT Recipients

Alabama
Unified Certification Program

Pursuant to 49 CFR Part 26
And 49 CFR Part 23

Approved: Secretary, U.S. Department of Transportation

By, _____

This _____ Day of _____ 2010

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ALABAMA UNIFIED CERTIFICATION PROGRAM AGREEMENT

RECITALS

WHEREAS, 49 Code of Federal Regulation (CFR) Part 23 Part 26 Subpart E-Certification Procedures Section 26.81, requires that all United States Department of Transportation (USDOT) Recipients, participate in statewide Unified Certification Disadvantaged Business Enterprise (DBE) Program (UCP); and

WHEREAS, this agreement establishes the State of Alabama Unified Certification Program *(ALUCP)*; and WHEREAS, the ALUCP will comply with all certification procedures and standards set forth in Subparts D and E of 49 CFR Part 23 and Part 26; and

WHEREAS, the ALUCP will cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administration; and

WHEREAS, the ALUCP will implement USDOT directives and guidelines concerning certification matters in accordance with 49 CFR Part 23 and Part 26; and

WHEREAS, the ALUCP will make uniform certification decisions for all Alabama USDOT financial assistance recipients who participate in the USDOT DBE Program; and

WHEREAS, the ALUCP shall develop and maintain an electronic Directory of firms certified in Alabama that will be available to the public on the Internet and in print and continuously updated with additions, deletions, and other changes; and

WHEREAS, the ALUCP shall have sufficient resources and expertise to carry out the requirements of 49 CFR, Part 23 and Part 26 Subpart E; and

WHEREAS, all obligations of recipients with respect to certification and non-discrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of 49 CFR, Part 26.

WHEREAS, the ALUCP will provide "one stop shopping" to applicants for DBE certification such that an applicant need apply only once for a DBE certification that will be honored by all ALUCP Members in Alabama; and

NOW, THEREFORE, in consideration of the promises and covenants herein contained ALUCP Members, agree to the following:

ARTICLE 1 — STATEMENT OF PURPOSE

Alabama's USDOT Recipients share the common goal of creating a standard process which improves the administration of DBE Programs through the exchange of information and coordination of activities. In order to achieve this goal the Recipients desire to establish a Unified Certification Program for the State of Alabama.

ARTICLE 2 — DEFINITIONS

Terms and Definitions used by the ALUCP shall be those specifically defined in this agreement, and in 49 CFR, Part 23 and Part 26, Paragraph 26.5, which is incorporated by reference herein:

2.01 Responsible Certifying Member

An Alabama Recipient as defined in 2.05 and ALUCP Member as defined in 2.10 and 3.01 who have a current DBE Program Plan approved by an appropriate USDOT Operating Administration that includes provisions for DBE certification and revocation processes. Responsible Certifying Members within the ALUCP are The Alabama Department of Transportation (ALDOT), the Huntsville Airport

Authority (HAA), Mobile Transit Authority (hereafter authorized to be referred to as The Wave Transit System), Alabama State Port Authority and the Birmingham Airport Authority (BAA). Additionally, the BAA, and HAA, will have the sole responsibility for certifying applications for concessions requests. BAA and HAA will ensure that the certification process as it relates to concessions are conducted according to the regulation 49 CFR, Part 23, with some references to 49 CFR, Part 26.

Whenever a Responsible Certifying Member receives an applicant request for DBE certification, they will notify all Responsible Certifying Members so that there will not be any duplication of service. All parties to the ALUCP will send in their DBE directories to ALDOT and all members will discuss their list, match firms, and compile one ALUCP DBE list for purpose of compiling a statewide comprehensive DBE Directory.

Responsible Certifying Members shall be responsible for certifying DBEs who apply to their agency. While the direct USDOT recipients will accept and process applications in their respective metropolitan areas, it may be burdensome for some recipients to be expected to travel into more rural sections of the state to conduct the required on-site visits. Therefore, Recipients may request assistance from ALDOT for some rural certifications, however, applicants in transit or aviation/airport services may be better served by an entity more familiar with their particular work type. Non–Certifying Members shall likewise consider the location of the applicant or DBE firm and any on–going contract or business relationships

with the firm when forwarding an application or a DBE file to a Responsible Certifying Member.

2.02 Disadvantaged Business Enterprise (DBE)

A DBE is an entity as defined in 49 CFR, Part 23 and Part 26, Paragraph 26.5, a for-profit small business concern, that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and whose management and daily business operations of the entity are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2.03 Non-Certifying Member

Alabama Recipient as defined in Sections 2.05 and 3.1 which states that a non-certifying member is an agency *that has* a current DBE Program Plan approved by an appropriate USDOT Operating Administration but that does not include provisions for DBE certification and revocation process. Non–Certifying Members who comprise the ALUCP are listed in Exhibit H.

2.04 Personal Net Worth

The net value of the assets of an individual remaining after total liabilities are deducted. Personal net worth as also defined within 49 CFR, Part 23 paragraph 23.35 for concessionaires (see exhibit "A", PNW calculation sheet for concessionaires) and Part 26, Paragraph 26.67.

2.05 Recipient

Any entity, public or private, from which USDOT financial assistance is received whether directly or through another recipient, through the programs of the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA).

2.06 Small Business Concern

A Small Business Concern is as defined in Section 3 of the Small Business Act 15, U. S. C., Section 632 and the Small Business Administration (SBA) Regulations, 13 CFR, Part 121; as business which does not exceed the cap on average annual gross receipts specified in 49 CFR, Part 23 and Part 26, Paragraph 26.65 (b).and 13 CFR, Part 121 as amended.

2.07 Socially and Economically Disadvantaged Individuals, as defined in 49 CFR Part 26, Paragraph 26.5

Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

A. Any individual whom a recipient finds to be socially and economically disadvantaged on a case-by-case basis.

B. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1) "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;

2) "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American,

and any other Spanish or Portuguese culture or origin, regardless of race;

3) "Native Americans" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4) "Asian-Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong,

5) "Subcontinent Asian Americans" which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka:

6) Women;

7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA at such time as the SBA designation becomes effective

2.08 Executive Committee

A standing committee comprised of one member from *ALDOT (DBE Coordinator or his designee),* The Wave Transit, Birmingham Airport Authority, Huntsville Airport Authority, and the Alabama State Port Authority. In the event there are

two or more Recipients under one operating administration, the selected representative will serve a three (3) year term on a rotating basis. New RCM members are eligible to become part of the Executive Committee, and they will affirm their status by signing the appropriate MOU. (See Exhibit E)

2.09 Sub-Recipient

Any entity, public or private, to which USDOT financial assistance is extended through another Recipient.

2.10 ALUCP Members

All Alabama Recipients participating in this agreement including Certifying and Non-Certifying Members.

ARTICLE 3-ORGANIZATION OF THE UCP

3.01 Members of the ALUCP (Recipients)

Pursuant to 49 CFR, Part 23 and Part 26, Paragraph 26.81 (a), all USDOT Recipients in this State shall participate in the ALUCP. All Alabama Recipients, that receive USDOT financial assistance are members in the ALUCP. Signatures to the ALUCP agreement of all USDOT Recipients in this State shall be maintained on file in the ALDOT Equal Opportunity Office.

3.02 DBE Directory Management

ALUCP Members hereby acknowledge that ALDOT is the major recipient of USDOT funds in the State of Alabama. ALDOT has the largest DBE certification program in the State, and maintains a Directory of certified DBEs that is available electronically and in printed form to Alabama Recipients, contractors, and other interested members of the general public.

A. ALDOT shall serve as Manager for the ALUCP's electronic DBE Directory, which shall include all DBE certifications made by Responsible Certifying Members.

B. ALDOT, as DBE Directory Manager, shall perform the following:

(1) Keep and maintain the up-to-date electronic DBE Directory;

(2) Ensure its availability to all ALUCP Members and other interested parties;

(3) Make available printed copies of the Directory upon request; and

(4) Provide Responsible Certifying Members with access to certification information in the DBE Directory through the Internet.

C. Responsible Certifying Members will, within three (3) business days of receipt of a new application for DBE certification, complete input to a Directory screen so that other Responsible Certifying Members will not process or otherwise duplicate work on the same DBE application.

D. When a Responsible Certifying Member makes a DBE certification approval decision, information shall be submitted electronically by the Responsible Certifying Member directly to the DBE Directory within three (3) business days of said approval. Pursuant to 49 CFR, Part 26, Paragraph 26.31. This information shall include:

1) Firm Name, Street Address, P.O. Box, Telephone and Facsimile Numbers, and E-mail Address;
2) Name of Majority Owner, Gender, and Minority Code
3) Type(s) of work performed by the DBE using North American Industry Classification system (NAICS) adopted by the SBA and other work specialty codes as needed;
4) Name of Responsible Certifying Member;
5) Beginning date of DBE Certification; and
6) Any other appropriate information as agreed upon by ALUCP Members.

E. Responsible Certifying Members shall input, onto the DBE Status Page, within three (3) business days of the action, information as required in paragraphs 3.03 (c) and (d) on firms denied DBE certification.

F. Firms denied DBE certifications by a Responsible Certifying Member are eligible to re-submit a DBE application after one (1) year from the date of denial.

3.03 Initial Consolidation

The ALUCP shall institute a limited "grandfather clause" that may grant DBE certification to firms currently certified by agencies that administer programs under the USDOT and 49 CFR, Part 23 and Part 26. Those agencies are ALDOT, BAA, HAA, The Wave Transit, and The Alabama Port Authority. This does not include firms certified as a DBE, MBE, or WBE by any city, state,

federal agency, or any other entity who does not comply with 49 CFR Part 26, as determined by the ALUCP.

This grandfather clause is a one time only occurrence and is subject to approval of the ALUCP. The Executive Committee will review all firms that any ALUCP partner makes a written request to determine eligibility under 49 CFR Part 26. The Executive Committee will review any investigative information, the certification file and any other documentation provided, as necessary. A determination will then be made as to whether or not the firm meets the eligibility requirements. If the Executive Committee determines the firm is ineligible to participate as a DBE, the firm will be advised of the intent to decertify. The firm may appeal this decision by submitting a written request within 30 days of the date of the notice of intent to decertify.

The appeals committee will not include the agency making the original certification determination. As provided in the DBE regulations, a firm may appeal directly to the USDOT; however, if they choose to appeal to the ALUCP, they must wait until a decision has been rendered from the ALUCP Appeals Committee before submitting their appeal to USDOT.

Firms applying for certification, after the effective date of this UCP agreement, must be certified based on guidelines prescribed in 49 CFR Part 26 and provisions under this agreement shall be recognized as certified by the ALUCP. Any ALUCP partner that has concerns regarding any "grandfathered" firm may file a Third Party Complaint. That challenge will be treated in the manner set out in the section Third Party Complaints.

Pending the establishment of the ALUCP meeting the requirements of this section, RCM's may enter into agreements with other USDOT recipients in Alabama to perform certification functions. RCM's may grant reciprocity to other USDOT recipient's certification decisions.

3.04 Transition of Currently Certified DBEs

Each ALUCP Member shall electronically submit its current certified DBE Directory to the DBE Directory Manager (ALDOT) for inclusion into the ALUCP's DBE Directory.

A. The Executive ALUCP Committee shall meet and review certified DBE firms submitted by Certifying ALUCP Members, and, if requested, determine the appropriate Responsible Certifying Member who will be responsible for future certification and re-certification of the DBE, based on location of the DBE business.

B. Upon determination by the ALUCP Executive Committee of the appropriate Responsible Certifying Member, the Certifying ALUCP Member having possession of the DBE firm's certification file will be notified, and shall immediately forward the DBE file to the Responsible Certifying Member, who shall be responsible for the DBE file. Certifying ALUCP Member will be responsible for the maintenance of its respective DBE Directory.

C. ALUCP will not process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state which it maintains its principal place of business.

3.05 **Executive Committee Duties**

Upon approval by the Secretary of the USDOT, the Executive Committee shall begin implementing the provisions of this agreement and the Implementation Plan, attached as Exhibit C (State of Alabama, Unified Certification Program, (Implementation Plan). See 49 CFR, Part 23 and Part 26, Paragraph 26.81, subpart A (2).

A. The Executive Committee shall meet as necessary to provide oversight and ensure compliance with 49 CFR, Part 23 and Part 26, Paragraph 26.81. The Executive Committee shall be seeking the participation, and may call a special meeting of all ALUCP Members to ensure compliance with said regulation.

B. The Executive Committee may establish special committees, by majority vote, which may include, but are not limited to, airport concessions, ALUCP Member Dispute Resolution, ALUCP Process, Quality Assurance, Training, and Intake.

C. The Executive Committee will notify ALUCP Members when it appears resources may not be sufficient to implement the requirements of 49 CFR, Part 23 and Part 26, Paragraph 26.81

ARTICLE 4 — RIGHTS AND RESPONSIBILITIES OF ALUCP MEMBERS

4.01 Types of ALUCP Members

Alabama recipients acknowledge that this agreement provides for two (2) classes of members, Responsible Certifying Members and Non-Certifying Members as

defined in 2.01 and 2.03, and that each class shall have specific rights and responsibilities as set forth herein.

4.02 Responsible Certifying Member Rights and Responsibilities

RCM Members can be added to the ALUCP, and they will affirm their status by signing the appropriate MOU. (See Exhibit E) Each Responsible Certifying Member shall (see Section 3.02 for list of RCM) have the following duties, and agree to maintain the confidentiality of financial and other information contained within the DBE application;

A. Comply with the terms and conditions of this agreement.

B. Collect and evaluate information received regarding DBE certification applications, conduct site visits, and make certification decisions as to DBE status, in accordance with 49 CFR, Part 23 and Part 26.

C. Promptly provide current information to the DBE Directory as required by and in the manner prescribed in Section 3.03 above.

D. Update the DBE Directory with all new and updated information (renewals, removals, change of address, etc.).

E. Retain and maintain appropriate DBE certification files.

F. Make file information available to other USDOT recipients and other states' UCPs in response to questions or complaints, upon written request.

G. An ALUCP Member may conduct a site visit (see Exhibit D, State of Alabama Unified Certification Program DBE, On-Site Review) to a DBE applicant in its vicinity, if possible based upon a request from an

ALUCP member from another location within the state. The requesting ALUCP member will be notified in a prompt manner if this is not possible. When an ALUCP member in close vicinity to the applicant for whatever reason cannot conduct the site visit, it will be conducted by the requesting member.

H. Process annual updates to verify continuing eligibility of DBE firms (see Exhibit B State of Alabama Unified Certification Program, No Change Affidavit) certified by it.

I. Perform specific file reviews at any time upon request by a ALUCP Member.

J. Make timely final decisions on DBE applications as provided in 49 CFR Part 23 and Part 26, Paragraph 26.83 (k) or within ninety (90) days of receipt of all information.

K. Provide information on any certified DBE upon request by a ALUCP Member.

4.03 Non-Certifying Member Rights and Responsibilities:

Non-Certifying Members can be added to the ALUCP, and they will affirm their status by signing the appropriate MOU. (See Exhibit F) Each Non-Certifying Member shall (see Section 2.03 for list of Non–Certifying Members) have the following duties;

A. Comply with the terms and conditions of this Agreement.

B. Promptly forward DBE applications to the Responsible Certifying Member.

C. Provide information on any certified DBE upon request by a ALUCP Member.

ARTICLE 5 — RIGHTS AND RESPONSIBILITIES OF THE ALUCP

5.01 CERTIFICATION DECISIONS

The Responsible Certifying Members shall maintain processes and programs that conform to the overall certification standards set out in 49 CFR, Part 26 and Part 23. Certification decisions made by ALUCP Responsible Certifying Members shall be binding on all USDOT Recipients with respect to participation in the DBE Program. In the event of a conflict, the ALUCP, through the Executive Committee, shall make a final decision, subject the provision of 49 CFR, Part 23 and Part 26. The Responsible Certifying Members shall perform the following duties:

A. Require potential DBEs to complete and submit an appropriate application form (see Exhibit A).

B. ALUCP Responsible Certifying Members working together will ensure that only firms certified as a DBE under 49 CFR, Part 26 and Part 23 participate as DBEs in the ALUCP.

C. Responsible Certifying Members will perform an on–site visit (see Exhibit D) to the offices of the firm and review their resumes and/or work histories. ALUCP Responsible Certifying Members will perform an on-site visit to job sites if such sites on which the firm is working at the time of the eligibility investigation are available in your jurisdiction

or local area. ALUCP may rely upon the site visit report of RCM recipient with respect to a firm applying for certification.

1) If the firm is a corporation, analyze the ownership stock in the firm;
2) Analyze the bonding and financial capacity of the firm;
3) Determine the work history of the firm, including contracts it has received and work it has completed.
4) Obtain copies of the licenses the firm needs to perform a work activity, along with a list of key personnel.

D. When another RCM, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm, ALUCP will promptly make the information available to the other RCM.

E. Once ALUCP has certified a DBE, it shall remain certified for a period of a least five (5) years unless and until its certification has been removed through the procedures as outlined in 49 CFR, Part 23 and Part 26, Paragraph 26.87.

F. A certified DBE shall inform the RCM to which it seeks certification in writing of any change in circumstances affecting its ability to meet size, disadvantage status, ownership, or control requirements of this part or any material change in the information provided in its application form. The DBE has thirty (30) days to submit the required documentation. Each RCM should ensure that ALDOT has a current list of DBE firms

which submitted their "No Change Affidavit" letters and corresponding documentation.

G. A certified DBE must provide to ALUCP, every year on the anniversary date of its certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an un-sworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there has been no change in the firm's circumstances affecting its ability to meet size, disadvantage status, ownership, or control requirements of this part or any material changes in the application form. The affidavit shall specifically affirm that DBE continues to meet Small Business Administration (SBA) business size criteria and the Department's statutory requirements overall gross receipts cap. If the DBE firm fails to provide this affidavit in a timely manner, it would be deemed as a failure to cooperate with established guidelines of the ALUCP.

H. A DBE is required to submit, along with the affidavit, a Personal Financial Statement and appropriate copies of income tax returns to document the annual gross receipts requirement. DBE firm submission of tax returns will include corporate returns if the firm is a corporation or a Limited Liability Corporation, or the appropriate schedules for a Subchapter S corporation, a partnership or a sole proprietorship.

l. If it is determined that there is reasonable cause to believe that the firm is ineligible, the firm will be processed through the procedures of 49 CFR, Part 23 and Part 26, Paragraph 26.87

5.02 Uniform Certification (Single Uniform Certification)

The UCP shall provide "one-stop shopping" (Single Uniform Certification) to applicants for DBE certification in Alabama, so that an applicant may apply once for DBE certification in Alabama and if granted, to be accepted by all ALUCP Members.

5.03 Processing Out-of-State Applications

The ALUCP will not process a new application for DBE certification from an applicant having its principal place of business in another state unless the applicant has previously been certified in that state. When a Responsible Certifying Member processes an out-of-state application, a full certification application file with all supporting documentation will be created by the Responsible Certifying Member, including a copy of the Site Visit Report obtained from the applicant's home state or from the states UCP if it is in place, before the firm is included in the DBE Directory.

5.04 ALUCP Information Program

ALUCP Members and the Executive Committee will provide information on the ALUCP to the public and to DBE applicants, individuals and firms seeking DBE certification with ALUCP applications. Accept DBE applications from any applicant firm and, *non-certifying member*, forward DBE applications to the appropriate Responsible Certifying Member for processing.

5.05 Meetings for Continued ALUCP Monitoring

The ALUCP, through its Executive Committee, shall hold a statewide membership meeting at least once a year or more often as needed for continued monitoring of the ALUCP, and on- going processes. The Executive Committee shall notify the ALUCP Members in writing of the date and location of the meeting at least thirty (30) days in advance of the meeting. A majority of those recipients shall constitute a quorum for conducting UCP business. When a quorum is established a majority vote of those members present shall be required to approve or disapprove.

ARTICLE 6 — CERTIFICATION PROCEDURES

6.01 Certification Application

ALUCP Members agree to use the USDOT Disadvantaged Business Enterprise Certification Application (attached as Exhibit A) and the Affidavit for Continuing Eligibility (within Exhibit B) which the DBE firm forwards to RCM that processed the firm's application. All DBEs must forward the Affidavit for Continuing Eligibility (Exhibit B) to the applicable RCM thirty (30) days prior to their recertification date

6.02 Certification Process

The ALUCP and its members shall follow the DBE certification processes and adhere to standards set forth in 49 CFR, Part 23 and Part 26.

6.03 **Certification Site Visits**

Responsible Certifying Members shall conduct a site visit to the principal place of business of an applicant prior to DBE certification and entry onto the DBE Directory.

A. Responsible Certifying Members shall utilize the On-Site Review Checklist, which is included as Exhibit D herein.

B. Responsible Certifying Members may at their discretion conduct site visits for one another when requested in instances where the Responsible Certifying Member requested is geographically close to the DBE's location.

ARTICLE 7 — COMPLAINTS, APPEALS AND DISPUTES

7.01 **Third Party Complaints**

Any person may file with ALUCP, a written complaint alleging that a currently certified firm is ineligible. The complainant must state specific reasons for ineligibility and submit documentation in support of the complaint .Written complaint (s) shall be mailed to the Responsible Certifying Members as listed in Exhibit F. The firm being challenged will be notified in writing of the challenge, the basic grounds, and the regulations. Confidentiality of complainant's identity will be protected as cited in 49 CFR, Part 23 and Part 26, Paragraph 109. However, general allegations or anonymous complaints will not be accepted. The Executive Committee will review all complaints and refer them to the RCM that approved the DBE certification. The appropriate RCM will review the records concerning the firm, any material provided by the firm and the

complainant, and available information. The RCM may request additional information from the firm or conduct any other investigation that it deems necessary. If RCM determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, it will provide written notice to the firm that RCM proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If RCM determines that such reasonable cause does not exist, it will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

7.02 ALUCP — Initiated Proceedings

If based on notification by the circumstance or other information that comes to our attention, a Responsible Certifying Member within the ALUCP determines that there is reasonable cause to believe that a currently certified firm is ineligible; the Responsible Certifying Member will provide written notice to the firm that the ALUCP proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause will specifically reference the evidence in the record on which each reason is based.

A. Hearing

When a Responsible Certifying Member within the ALUCP notifies a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a) or (b) of this Section, ALUCP will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove

its eligibility in person and provide information and arguments concerning why it should remain certified.

1) ALUCP will maintain a complete record of the hearing, by any means acceptable under state law.
2) The firm may elect to present information and arguments in writing, without going to a hearing.

B. *Separation of Functions*

ALUCP will ensure that a decision (proceeding to remove a firm's eligibility) is made by an office and personnel (sub-committee) that did not take part in actions leading to the removal of the firm's eligibility

1) ALUCP's method of implementing this requirement will be made part of its DBE program.

C. Selection

The ALUCP Appeals Hearing Board shall consist of no more than seven (7) members, two members from ALDOT, two members from The Wave Transit, two members from the Alabama State Port Authority, and one member from the Birmingham Airport Authority or the Huntsville Airport Authority. All members shall be appointed by their respective agency head or his designee, and shall serve for a period not to exceed three (3) years. There shall also be one alternate appointed for each member of the hearing board. All alternates shall be appointed by each agency's department head or his designee, and shall serve for a period not to exceed three (3) years. Members of the Appeals

Hearing Board shall not include any individual that took part in actions resulting in the proposed removal of DBE firm's eligibility that is subject of the appeal.

D. Chairmanship

The chairman of the ALUCP Hearing Board shall be appointed alphabetically by agency, and shall serve a period not to exceed three (3) years. Subsequent chairmen shall be rotated every three (3) years based on the following order: ALDOT, BAA, The Wave Transit, HAA, The Alabama Port Authority.

E. Voting

A majority of the ALUCP Appeals Hearing Board members is needed for a quorum. Only the official designated representative, or an approved alternate, from each certifying agency may vote. Each member entitled to vote shall be entitled to one vote upon each matter submitted before the hearing board. A majority vote on all matters submitted before the hearing board shall be the decision of the board.

F. Meetings

The ALUCP Appeals Hearing Board shall hold a meeting each month. Frequency of the appeals hearing board meetings is subject to change upon action by the board. Notification of any such changes will be made in advance. Meetings will be scheduled in areas within the state of Alabama which are conducive to attendance by all Responsible Certifying Members elected to the appeals hearing board.

G. *Grounds for decision*

The Hearing Board will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to ALUCP at the time of the firm's certification. Rather, such decision will be based on one or more of the following:

1) Changes in the firm's circumstances since the certification of the firm by ALUCP that render the firm unable to meet the eligibility standards of this part;
2) Information or evidence not available to ALUCP at the time the firm was certified;
3) Information that was concealed or misrepresented by the firm in previous certification actions by ALUCP;
4) A change in ALUCP's certification or requirements since the firm was certified; or
5) A documented finding that information provided by a certified firm was factually erroneous.

It is recommended that a representative from the ALUCP certifying staff be in attendance at all hearings to present the ALUCP denial justification.

7.03 Notice of Decision

Following ALUCP decision, ALUCP will provide the firm written notice of decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of ALUCP's decision and of the availability of an appeal to the

United States Department of Transportation (USDOT). ALUCP will send copies of the notice to the complainant in an ineligibility complaint.

A. *Status of Firm During Proceeding*

1) A firm remains an eligible DBE during the proceeding to remove its eligibility.

2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (c) of this section.

B. *Availability of Appeal*

When ALUCP makes an administratively final denial or removal of a firm's eligibility under this Section, the firm may appeal the removal to USDOT.

C. *Process for Certification Appeals to the Hearing Board and USDOT*

The ALUCP Appeals Hearing Board will only hear cases in which eligibility has been removed. The firm could appeal to the ALUCP Appeals Hearing Board and then appeal to the USDOT or could appeal directly to the USDOT. The ALUCP Hearing Board will be in compliance with federal regulations. The appeals hearing board will give the firm the opportunity for administrative reconsideration of eligibility determination. However, if the firm chooses to appeal to the hearing board, they do not forfeit their right to appeal to the USDOT, within the time frame provided in 49 CFR, Part 23 and Part 26. All appeals to the hearing board shall be submitted in written form. If the firm requests the opportunity to appear before the ALUCP Appeals

Hearing Board, the request must state whether the firm is to be represented by counsel. If a firm is denied certification or whose eligibility is removed by the ALUCP process, the firm may make an administrative appeal to the USDOT.

Process to appeal to USDOT

If a firm is denied its initial application for certification, the applicant firm will have the right to appeal the decision directly to the USDOT within ninety (90) days of the date of the final decision.

If appealing directly to USDOT, send appeals to the following Address:

United States Department of Transportation
Department Office of Civil Rights
External Civil Rights Programs Division
1200 New Jersey Ave. S.E. W78-340
Washington, DC 20590

7.04 Administrative Removal of Eligibility

In circumstances where a certified firm, or new applicant has failed to submit required documentation or exceeded Personal Net Worth thresholds, there will be no administrative re- consideration. Those circumstances include:

A. Any certified firm that does not submit the annual affidavit update required in accordance with 49 CFR, Part 23 and Part 26, Paragraph 26.83 (j) sworn by the owner's that there has been no change in the firm's circumstances affecting its ability to meet size, disadvantage status, ownership, or control requirements or any material changes in its application form, except for changes which you have been notified for in writing, will have their

certification proposed for decertification for failure to cooperate under 49 CFR, Part 26, paragraph 26.109 (c) thirty (30) days from the due date.

B. If the statement of personal net worth that an individual submits shows that the individual's personal net worth exceeds $750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding in order to rebut the presumption of economic disadvantage in this case.

C. A firm is not eligible in any federal fiscal year if the firm exceeds the previous three (3) years average gross receipts in accordance with 26.65 (b).

D. Regardless of race, gender, or size of the business, any individual whose personal net worth exceeds $750,000.00 is not considered economically disadvantaged and is not eligible for the DBE program. There may be exceptions under 49 CFR, Part 23.

7.05 Notice Requirements

An action by a Responsible Certifying Member shall be in writing, and shall:

(a) Be delivered via Certified U.S. Mail, Return Receipt Requested.

(b) Be specific as to the action being taken and the reason for the action and facts relied upon for the action.

(c) Advise the party of the right to appeal.

(d) Provide information on the appropriate appeal process.

7.06 Member Disputes

ALUCP Members shall make every effort to resolve disputes that may arise between them

7.07 Unresolved Member Disputes

When ALUCP Members are unable to resolve a dispute, the matter shall be submitted to the Executive Committee for resolution. The decision of the Executive Committee shall be final and binding without rights to further administration or judicial review on all those ALUCP Members subject to the provisions of 49 CFR, Part 23 and Part 26.

ARTICLE 8 — TRAINING

8.01 Executive Oversight Committee

The Executive Committee shall retain DBE certification oversight of ALUCP Members. ALDOT will be responsible for DBE certification training of ALUCP Members. Upon approval of the Executive Committee, ALDOT may provide, otherwise arrange for, DBE certification training for any Responsible Certifying Member upon request or it may require a Responsible Certifying Member to attend DBE certification training in order to ensure compliance with the provisions of this agreement and 49 CFR, Part 23 and Part 26.

8.02 Training Costs

A Responsible Certifying Member requesting DBE certification training through ALDOT, or who has been required to obtain such training shall bear the costs and expense for the said training.

8.03 Supportive Services

The ALUCP recognizes the need for improved technical, business opportunities and supportive services. All agencies which participate in the ALUCP should combine their efforts to provide each Responsible Certifying Member information

on upcoming activities which may offer additional and meaningful training to all DBE firms within the ALUCP.

ARTICLE 9 — DBE DIRECTORY

9.01 Organization of DBE Directory

The DBE Directory shall be organized and maintained by ALDOT. All ALUCP Members agree to maintain compatible software and systems in order to efficiently and effectively utilize the electronic DBE Directory, and to timely delivery of DBE certification information and updates.

9.02 Availability

The DBE Directory shall be available electronically (and in printed form when requested) to ALUCP Members, contractors, and other interested parties.

ARTICLE 10 — FEES/COSTS

10.01 Fees

The ALUCP does not consider assessing a fee at this time but reserves the right to at a later date. Any fees considered must be justified and agreed to by all of the ALUCP members required to pay.

ARTICLE 11 — GENERAL PROVISION

11.01 Exhibits

All exhibits to this agreement are incorporated herein by reference and made a part hereof.

11.02 Interpretation

Article and section headings and Table of Contents are for convenience only and shall not affect construction of this agreement. The agreement shall be governed

by the laws of the State of Alabama and in compliance with 49 CFR, Part 23 and Part 26.

11.03 Amendments

This agreement may not be amended, modified, or supplemented except by an instrument in writing agreed upon by the majority of the ALUCP Members. Notwithstanding the foregoing, should any provisions of 49 CFR, Part 23 and Part 26 be changed or modified, corresponding provisions of this agreement shall be modified accordingly.

11.04 Compliance with Law

ALUCP Members agree that the operation of this agreement and performance of all obligations hereunder shall comply with 49 CFR, Part 23 and Part 26 and with applicable federal and state laws.

11.05 Signed Agreement

This agreement will become effective upon approval by the Secretary of USDOT. By executing the Signature and Declaration of Status Page of this agreement, recipients agree to become members of the ALUCP, and agree to accept the terms and conditions of this agreement. Following USDOT approval, a recipient may become a member by submitting a fully executed Signature and Declaration of Status page from this agreement to the Executive Committee, which shall be delivered to ALDOT where it shall remain on file. In order to be a member, a recipient must be receiving at least two hundred fifty thousand dollars ($250,000.00) in federal funds.

11.06 Severability

Should any part, term, portion, or provision of this Agreement be in conflict with any law of the United States or of the State of Alabama, or otherwise be unenforceable or ineffectual, the remaining provisions shall be deemed valid and severable, and not affected thereby.

11.07 Successors

This agreement shall be binding upon and inure the benefit of any successors or assigns of the ALUCP Members.

11.08 Execution

Execution of this agreement by ALUCP Members, shall comply with appropriate procedures, resolutions, authorized signatures, and required filings pursuant to the law governing each ALUCP Member. The State of Alabama ALUCP will be fully operational no later than eighteen (18) months following the approval by the secretary.

11.09 Termination

Once this agreement is signed by all participating members, the terms of the agreement will be good for five (5) years. This agreement may be amended to remain in compliance with USDOT and/or to clarify and address issues that may have been inadvertently omitted. This agreement may be terminated by any party upon providing thirty (30) days written notice of its intent to terminate the agreement. This agreement can be renewed for another five (5) years.

EXHIBIT A

STATE OF ALABAMA
UNIFIED CERTIFICATION PROGRAM

DISADVANTAGED BUSINESS ENTERPRISE

CERTIFICATION APPLICATION
PERSONAL FINANCIAL STATEMENT
AFFIDAVIT OF CERTIFICATION

DBE Application Cover Sheet

Thank you for your interest in becoming a Disadvantaged Business Enterprise with the Alabama Department of Transportation. Should you have any questions regarding this application, please feel free to call at an any time.

Alabama Department of Transportation
Personnel and Compliance Bureau
Disadvantaged Business Enterprise (DBE)
Mr. John Huffman, DBE Coordinator
2720 Gunter Park Drive West
Montgomery, AL 36109
1-800-269-5081 or 1-334-244-6261
Fax: 334-260-5313

In this packet you will find the following items:

1. Application Instructions
2. Uniform Certification Application
3. Personal Financial Statement Instructions
4. Personal Financial Statement
5. Affidavit of Certification (Requires notarization)
6. Checklist of supporting documentation to be submitted

Please complete the application and other supporting documents in their entirety and mail them to the above address.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① **Should I apply?**
- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed $17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② **Is there an easier way to apply?**
If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. **NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.**

③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

④ **Where can I find more information?**
- U.S. DOT – http://osdbuweb.dot.gov/business/dbe/index.html (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – http://www.ntis.gov/naics (provides a listing of NAICS codes) and http://www.sba.gov/size/indextableofsize.html (provides a listing of SIC codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? *(If Yes, check appropriate box(es))*	
☐ DBE	Name of certifying agency:
	Has your firm's state UCP conducted an on-site visit? ☐ Yes, on _____ State: _____ ☐ No
☐ 8(a)	⊗ STOP! If you checked either the 8(a) or SDB box, you may not have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.
☐ SDB	

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

☐ Yes, on _____ ☐ No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:		
(3) Phone #:	(4) Other Phone #:		(5) Fax #:	
(6) E-mail:		(7) Website (*If have one*):		
(8) Street address of firm *(No P.O. Box)*:	City:	County/Parish:	State:	Zip:
(9) Mailing address of firm (*if different*):	City:	County/Parish:	State:	Zip:

B. Business Profile

(1) Describe the primary activities of your firm:	(2) Federal Tax ID (if any):
(3) This firm was established on _____	(4) I/We have owned this firm since: _____
(5) Method of acquisition *(check all that apply)*: ☐ Started new business ☐ Bought existing business ☐ Inherited business ☐ Secured concession ☐ Merger or consolidation ☐ Other *(explain)* _____	
(6) Is your firm "for profit"? ☐ Yes ☐ No	⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

(7) Type of firm *(check all that apply)*:
☐ Sole Proprietorship ☐ Partnership ☐ Corporation
☐ Limited Liability Partnership ☐ Limited Liability Corporation ☐ Joint Venture
☐ Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?
☐ Yes ☐ No
If Yes, explain:

(9) Number of employees: Full-time _____ Part-time _____ Total 0

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts $ _____
Year _____ Total receipts $ _____
Year _____ Total receipts $ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?
☐ Yes ☐ No

If Yes, identify: Other Firm's name: _____
Explain nature of shared facilities:

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	☐ Yes ☐ No
	(b) consisted of a partnership in which one or more of the partners are other firms?	☐ Yes ☐ No
	(c) owned any percentage of any other firm?	☐ Yes ☐ No
	(d) had any subsidiaries?	☐ Yes ☐ No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? ☐ Yes ☐ No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each *(attach extra sheets, if needed)*:

	Name	Address	Type of Business
(1)			
(2)			
(3)			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? ☐ Yes ☐ No
If Yes, then list *(attach extra sheets, if needed)*:

	Name	Relationship	Company	Type of Business	Own or Manage?
(1)					
(2)					

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below *(If more than one owner, attach separate sheets for each additional owner)*:

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address *(street and number)*:	City:	State: Zip:
(5) Gender: ☐ Male ☐ Female	(6) Ethnic group membership *(Check all that apply)*: ☐ Black ☐ Hispanic ☐ Native American ☐ Asian Pacific ☐ Subcontinent Asian ☐ Other *(specify)* _____	
(7) U.S. Citizen: ☐ Yes ☐ No		
(8) Lawfully Admitted Permanent Resident: ☐ Yes ☐ No		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned: .0%		Cash	$_____
(4) Familial relationship to other owners:		Real Estate	$_____
		Equipment	$_____
		Other	$_____

(5) Shares of Stock: Number Percentage Class Date acquired Method Acquired

(6) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(7) Does this owner own or work for any other firm(s) that has a relationship with this firm *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)*? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title: _____
Nature of Business Relationship:

C. Disadvantaged Status—NOTE: Complete this section only for each owner applying for DBE qualification (i.e. for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? *(Use and attach the Personal Financial Statement form at the end of this application, attach additional sheets if more than one owner is applying)*

(2) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No
If Yes, explain *(attach additional sheets if needed)*:

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors *(If additional space is required, attach a separate sheet)*:

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No
If Yes, identify for each: Person: _____ Title: _____
Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*)? ☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
Nature of Business Relationship:

B. Identify your firm's management personnel who control your firm in the following areas *(If more than two persons, attach a separate sheet)*:

	Name	Title	Ethnicity	Gender
(1) Financial Decisions *(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)*	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? ☐ Yes ☐ No
If Yes, identify for each: Person: _____ Title: _____
Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*)?
☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
Nature of Business Relationship:

C. Indicate your firm's inventory in the following categories (*attach additional sheets if needed*):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No

If Yes, explain:

E. Financial Information

(1) Banking Information:
(a) Name of bank: _____ (b) Phone No: _____
(c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) Bonding Information: If you have bonding capacity, identify: (a) Binder No: _____
(b) Name of agent/broker _____ (c) Phone No: _____
(d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
(e) Bonding limit: Aggregate limit $ _____ Project limit $ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years *(attach additional sheets if needed)*:

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm *(e.g. contractor, engineer, architect, etc.)(attach additional sheets if needed)*:

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

Instructions for Completing Personal Financial Statement

Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's net worth does not include the individual's ownership interest in an applicant firm or the individual equity in his or her primary place of residence. However, you must provide this information.

Each individual owner of an applicant firm, whose ownership and control are relied upon for DBE certification, must submit a signed of statement of personal net worth.

If an eligible individual has a personal net worth which exceeds $ 750,000, that individual is not considered socially and economically disadvantaged for purposes of this program.

If an individual is married, please note the following:

All assets and liabilities should be halved accordingly on the form if jointly held. If assets and liabilities are separately owned, these items should only be reported on the respected owner's form.

Examples:

John and Mary Smith jointly own their primary residence valued at $200,000. They each claim 50% ownership of the property. John would only report his 50% interest, $100,000, on his Personal Net Worth Statement.

Mary Smith has a vacation home in another state valued at $200,000. She owns the vacation home in its entirety. John would not report this on his Personal Net Worth Statement.

The Personal Financial Statement must be filled out in its entirety leaving no line blank. For any section where no asset or liability exists, you may indicate "Not Applicable." The Personal Financial Statement must be complete, legible, and accurate. If you require more space in any section, attach additional sheets, and reference the appropriate section number and heading.

ASSETS

Cash on hand & banks:
Enter the amount of cash on-hand in your checking accounts.

Savings Account:
Enter the total cash in all savings accounts.

IRA or other Retirement Accounts:
Enter the total value of all IRA's and other retirement accounts, including any Deferred Compensation and Pension Plans.

Accounts & Notes Receivable:
Enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm.

Life Insurance:
Enter the cash surrender value of any life insurance policies. Give the face amount and cash value of policies, name of insurance companies and beneficiaries in Section 8.

Stock and Bonds:
Enter the current market value of your stocks/ bonds. List number of shares, name of securities, cost, market value, date of quote/ exchange, total value in Section 3.

Real Estate:
Enter the current fair market value if all real estate owned. If the Residence is part of a farm or other large portion of real estate, submit a separate valuation for the Residence and the remaining land. List each parcel separately. The following should be listed in Section 4: type property, address, date purchased, original cost, present market value, name and address of mortgage holder, mortgage account number, balance, monthly payment(s), and status of mortgage. *Note: ALDOT, FTA, and APA applicants may exclude their Personal Residence and Business Real Estate. All concessionaires must include Personal Residence and Business Real Estate.

Automobile:
Enter the current fair market value of all automobiles owned.

Other Personal Property:
Enter the current fair market value of all other personal property owned, but not included in the previous sections. (i.e. furniture, jewelry, guns, cameras, electronic, equipment, etc.) This category could also include motorcycles, motor home(s), boat(s) and other recreational vehicles. A complete description of these assets is required in Section 5. If any is pledged as security, list name, address of lien holder, terms of payment, and if it's delinquent, describe delinquency.

Other Assets:
Enter the current fair market value of all other assets owned, but not included in the previous sections. ** A complete description of these assets is required in Section 5. If any is pledged as security, list name, address of lien holder, terms of payment, and if it's delinquent, describe delinquency. (Note: Other assets could be other business enterprises in which the applicant is a partial owner. For other business assets, a copy of the most recent balance sheet must be submitted along with information ad to the applicant ownership share of the net worth.)

Total:
Calculate the total value of all listed assets.

LIABILITIES

Accounts Payable:
Enter the total value of all unpaid accounts payable that is your responsibility. (i.e. gas, electric, telephone bills, etc.)

Notes Payable to Bank and Others:
Enter the total amount due on all Notes Payable to Banks and others, paid on an installment basis. Please be sure to indicate the total monthly payment in the space provided. This should include the amount of any loans from the applicant firm. This should not, however, include any mortgage balances. ** Name and address of note holder, original balance, current balance, payment amount, type of collateral should be listed in Section 2.

Loans on Life Insurance:
Enter the total value of all loans due on Life Insurance Policies. **A complete description is required in Section 8.

Mortgages on Real Estate:
Enter the total value due on all mortgage(s) payable on Real Estate. ** A complete breakdown of all mortgage(s) on Real Estate is required in Section 4.

Unpaid Taxes:
Enter the total amount of all taxes that are currently due, but are unpaid. Contingent tax liabilities or anticipated taxes for current year should not be included. In Section 6 describe in detail, as to whom payable, type, when due, amount, and to what property, tax liens or attachments.

Other Liabilities:
Enter the total value due on all other liabilities not classified in the previous section. **A complete description is required in Section 7.

Total Liabilities:
Calculate the total of all listed liabilities.

Net Worth:
Calculate your net worth by subtracting your "Total Liabilities" from your "Total Assets." Indicate negative net worth with parenthesis ().

+ Total Assets
- Total Liabilities
= Net Worth

Total:
Add the values enter for "Total Liabilities" and "Net Worth". This amount must equal the total value of assets.

+ Total Liabilities
- Net Worth
= Total Assets

SECTION 1- SOURCE OF INCOME

Salary:
Enter the amount of your total annul salary. This includes any salary from the applicant firm and if applicable, any salary from outside employment.

Net Investment Income:
Enter the total amount of all investment income. (i.e. dividends, interest, etc)

Real Estate Income:
Enter the total amount of all real estate income received from the sale, rental, lease, etc. of real estate held.

Other Income:
Enter the total amount of all other income received (i.e. alimony, Social Security, Pension, etc.) Please be sure to describe the source of the other income in the space provided below in this section.

CONTINGENT LIABILITIES

As Endorser or Co-Maker:
Enter the total potential liabilities due as a result of being a co-signer for a loan or other commitments.

Legal Claims and Judgments:
Enter the potential liabilities due as a result of legal claims from judgments, lawsuits, etc.

Provisions for Federal Income Tax:
Enter the total amount of all Federal taxes for which you are potentially liable due to an anticipated gain on the pending sale of an asset or other circumstances, such as pending disputes or litigation which could possibly result in a personal tax liability.

Other Special Debt:
Enter the total amount due on all remaining potential debts not accounted for.

SECTION 2- NOTES PAYABLE TO BANKS AND OTHERS

Enter the name and address of note holder(s), original balance, current balance, payment amount, frequency, and how secured for each note payable as entered in the "Liabilities" column.

SECTION 3-STOCKS AND BONDS

Enter the number of shares, names of securities, cost, fair market value, and the date of fair market value for all shares of stocks and bonds held. (Note: Do not include your interest in the applicant firm in this section.)

SECTION 4-REAL ESTATE OWNED

Starting with your primary residence, enter the type of property, address, date of purchase, original cost, present fair market value, name and address of mortgage holder, mortgage account number, mortgage balance, amount of payment, and status of mortgage for all real estate held. Second mortgages also should be included in this section. Please ensure that this section contains all real estate owned, including rental properties, commercial properties, etc.

These values should correspond with the "Real Estate" amount listed in the "Assets" column. Additionally, these values should correspond with the "Mortgages on Real Estate" amount listed in the "Liabilities" column.

SECTION 5- OTHER PERSONAL PROPERTY

Describe the "Other Personal Property" and "Other Assets" owned as listed in the "Assets" column.

SECTION 6-UNPAID TAXES

Describe in detail, as to the type, to whom payable, when due, amount, and to what property, if any, the lien attaches. Please refer to the unpaid taxes listed in the "Liabilities" column. If none, state NONE. This section should not include the contingent tax liabilities or anticipated taxes owed for the current year.

SECTION 7-OTHER LIABILITIES

Describe in detail any other liabilities as referenced by the value listed in the "LIABILITIES" column. If none, state NONE.

SECTION 8- LIFE INSURANCES HELD

Describe all life insurance policies held. Please be sure to include the face amount of the policies, name of insurance company, beneficiaries and cash surrender values of the policies.

FINALLY, PLEASE BE SURE TO SIGN AND DATE THE PERSONAL FINACIAL STATEMENT IN THE SPACE PROVIDED.

OMB APPROVAL NO. 3245-0188
EXPIRATION DATE:3/31/2008

U.S. SMALL BUSINESS ADMINISTRATION

PERSONAL FINANCIAL STATEMENT

As of _____, _____

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

Name | Business Phone

Residence Address | Residence Phone

City, State, & Zip Code

Business Name of Applicant/Borrower

ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash on hand & in Banks	$	Accounts Payable	$
Savings Accounts	$	Notes Payable to Banks and Others (Describe in Section 2)	$
IRA or Other Retirement Account	$	Installment Account (Auto) Mo. Payments $	$
Accounts & Notes Receivable	$	Installment Account (Other) Mo. Payments $	$
Life Insurance-Cash Surrender Value Only (Complete Section 8)	$	Loan on Life Insurance	$
Stocks and Bonds (Describe in Section 3)	$	Mortgages on Real Estate (Describe in Section 4)	$
Real Estate (Describe in Section 4)	$	Unpaid Taxes (Describe in Section 5)	$
Automobile-Present Value	$	Other Liabilities (Describe in Section 7)	$ 0.00
Other Personal Property (Describe in Section 5)	$	Total Liabilities	$
Other Assets (Describe in Section 6)	$	Net Worth	$ 0.00
Total	$ 0.00	Total	$

Section 1. Source of Income		Contingent Liabilities	
Salary	$	As Endorser or Co-Maker	$
Net Investment Income	$	Legal Claims & Judgments	$
Real Estate Income	$	Provision for Federal Income Tax	$
Other Income (Describe below)*	$	Other Special Debt	$

Description of Other Income in Section 1.

*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly,etc.)	How Secured or Endorsed Type of Collateral

SBA Form 413 (3-05) Previous Editions Obsolete (Jumbo)

This form was electronically produced by Elite Federal Forms, Inc.

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).					
Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency).

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 7. Other Liabilities. (Describe in detail)

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature: Date:

Signature: Date:

PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503. PLEASE DO NOT SEND FORMS TO OMB.

PERSONAL NET WORTH CALCULATION – CONCESSIONS APPLICATION

Present market Value of Primary Residence $_____

Less: Mortgage Balance of Primary Residence$_____

Equal: Equity in Primary Residence $_____

PERSONAL NEW NET WORTH-ADJUSTED NET WORTH CALCULATION

Net Worth: $ _____

Less: Individual's Portion of Equity in Primary Residence$ _____

Less: Value of Ownership Interest in Applicant's Firm $ _____

Less: Documented Amount of 3rd exemption up to $3million $_____

Adjusted New Net Worth: $ _____

I declare under penalty of perjury that the information provided in this calculation and application, along with documentations is true and correct.

Executed on _____ (Date)

Applicant's Signature_____

NOTARY CERTIFICATE

On this ____day of _____, 200__, before me appeared _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit and did state that he or she was properly authorized by (name of firm)_____ to execute the affidavit and did so as his or her free act and deed.

(SEAL / STAMP)

Notary Public _____

Commission Expires_____

MEMO: Exclude documented exemption, $3M for non-concession applicants

BIRMINGHAM AIRPORT AUTHORITY	49 CFR - PART 23		
CONCESSIONS CALCULATION FOR - PNW	Effective Date: April 21, 2005.		
SAMPLE ONLY	GROSS PERSONAL NET WORTH		
GROSS PERSONAL NET WORTH	$ 4,600,000.00		
EXCLUDE EQUITY IN PRIMARY RESIDENCE	400,000.00		
EXCLUDE EQUITY IN BUSINESS	500,000.00		
EXCLUDE 3rd CAP-With documentation	3,000,000.00		
NET PERSONAL NET WORTH	$ 700,000.00	This amount is less than $750,000.00 threshold This firm qualifies as a ACDBE under the rules	
Must have documentation from a bank or financial institution that they require X-Dollars in assets in order for them to grant a business loan			
Loan must be necessary to open a concession business at an airport			
Owner's documentation must justify the need for a loan of the amount referenced in the letters from the bank or financial institution			
Document the build out costs and other capital investments needed to begin operating the concession			
For further instructions or if you have questions, call Mr. Larry J. Holman at 205-599-0508. B'ham Airport Authority			

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for <u>each</u> owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female , Black American Hispanic American Native American

Asian- Pacific American Subcontinent Asian American

Other (specify) _____.

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed $750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____(Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE:

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST
In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- ☐ Work experience resumes (that include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- ☐ Personal Financial Statement (form available with this application)
- ☐ Personal tax returns (all related schedules for the past three years), for each owner claiming disadvantaged status
- ☐ Your firm's tax returns (gross receipts) and all related schedules for the past three years
- ☐ Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*)
- ☐ Your firm's signed loan agreements, security agreements, and bonding forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ List of equipment leased and signed lease agreements
- ☐ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ☐ Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- ☐ All relevant licenses, license renewal forms, permits, and haul authority forms
- ☐ DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ☐ Official Articles of Incorporation (*signed by the state official*)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement
- ☐ Minutes of all stockholders and board of directors meetings
- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)
- ☐ Personal and Corporate taxes for the past three (3) years

Trucking Company

- ☐ Documented proof of ownership of the company
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- ☐ List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- ☐ Proof of warehouse ownership or lease
- ☐ List of product lines carried
- ☐ List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

EXHIBIT B

State of Alabama
Unified Certification Program

Disadvantaged Business Enterprise (DBE)
NO CHANGE AFFIDAVIT

No Change Affidavit

I, _____, swear (or affirm) that there have been no changes in _____ circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26 and 13 CFR Part 121. I swear (or affirm) there have been no material changes in the information provided in the Disadvantaged Business Enterprise program application for certification, except for any changes about which I have provided written notice to the Alabama Unified Certification Program pursuant to 49 CFR § 26.83(i).

I swear (or affirm) that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified in 49 CFR § 26.5, without regard to my individual qualities. I further swear (or affirm) that my personal net worth does not exceed $750,000.00, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I specifically swear (or affirm) that _____ (name of firm) continues to meet the Small Business Administration (SBA) business size criteria and the overall gross receipts cap of 49 CFR Part 26. The annual gross receipts (as defined by SBA rules) over the previous three (3) fiscal years as follows:

_____ _____

_____ _____ Average annual gross receipts _____

_____ _____

And they do/do not exceed _____. Attached are gross receipts and/or tax documents to support this affidavit.

Signature: _____ *Date*: _____

Firm number_____ Firm Address_____

On this _____ day of _____, 2005, before me appeared (name) _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit and did state that he or she was properly authorized by (name of firm) _____, to execute the affidavit and did so as his or her free act and deed.

(SEAL/STAMP)

Notary Public: _____
Commission Expires: _____

[1]*Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment or both.*

EXHIBIT C

State of Alabama
Unified Certification Program

IMPLEMENTATION PLAN

State of Alabama
Unified Certification Program
IMPLEMENTATION PLAN

STEP	ACTION	TIME
1	ALUCP Chairman notified UCP Members when the Secretary of USDOT approves the UCP Agreement	Upon Approval
2	UCP Members begin processing new DBE applications, pursuant to the provisions of the UCP Agreement {UCP DBE Directory will be available by October 1, 2007} ALDOT provides appropriate training in use of Internet-based system.	Upon Approval
3	ALDOT combines all Directories and forwards the combined Directory to all Executive Committee Members.	30 Days
4	The Executive Committee will meet and designate a Responsible Certifying Member for each DBE firm.	60 Days
5	Members notified of Executive Committee decisions in Step 5, are instructed to forward files to designated Responsible Certifying Members.	90 Days
6	Responsible Certifying Members will review files of non-Alabama firms. [If certified in its home state, a copy of DBE certification is obtained. If the firm is not certified in its home state, notice is given that their Alabama certification will continue only if there is clear evidence that the firm is seeking home state certification, and without such evidence their Alabama certification will be revoked in accordance with 49 CFR, Part 26, Paragraph 26.87.]	90 Days
7	The Executive Committee will meet to discuss implementation, progress, resolve issues and establish a date for their next meeting.	30 Days
	TOTAL TIME:	360 Days

EXHIBIT D

STATE OF ALABAMA
UNIFIED CERTIFICATION PROGRAM

Disadvantaged Business Enterprise (DBE)
On–Site Review Checklist

Note and Comments:

Introduction:
Applicant firm overview
(Firm name, location, work areas for DBE work)
(Firm's relevant history summary-brief)

Background:
Applicant identification
(Name, % ownership, minority status, social/economic status)
Summary of Initial start-up
(Date, by whom, how capitalized, identify where proceeds came from)
Business Size
Firm's work history
Expertise of owner (s) and key personnel

Ownership:
Past and current owners
Ownership distribution by name, race, and sex
Relationship of owners
How ownership acquired

Management:
Majority Owner
(Responsibilities, level of expertise, skills, experience, ability, authority, day-to-day, etc)
Others Involved
(Responsibilities, level of expertise, skills, experience, ability, authority, day-to-day, etc.)

Control:
Majority Owner
(Authority, possess license/certifications, ability, day-to-day, other business interests, responsibilities, adequate expertise, skills, knowledge, etc.)

Others Involved:
(Authority, possess license/certifications, ability, day-to-day, other business interests, responsibilities, adequate expertise, skills, knowledge, etc.)

ALUCP Representative: _____

Applicant Representative: _____

Significant Factors:

- Site appropriate citation from the regulations
- State and explain if majority owner (s) are socially and economically disadvantaged
- State and explain that alleged majority owner (s) own at least 51% of the applicant firm.
- State and explain relationships that could compromise the firm's independence.
- When applicable, state that the firm is certified with the SBA.
- State and explain discrepancies found with documents provided (i.e. tax returns differ from PNW statements, lease agreement amount differ from lease payments, by-laws differ from what applicant alleges for making major decisions, equipment title differ from firm/owner's names, inconsistencies with dates on documents, etc.)

Recommendation:

Based on the information provided and guidelines set forth in 49 CFR part 26, the firm is not owned and controlled by socially and economically disadvantaged individual. Therefore, the committee recommends that ABC Applicant Firm be denied DBE certification.

OR

Based on the information provided and guidelines set forth in 49 CFR Part 26, the firm is owned and controlled by socially and economically disadvantaged individual. Therefore, the committee recommends that ABC Applicant Firm be approved for DBE certification.

ALUCP Representative: _____

Applicant Representative: _____

EXHIBIT E

ALUCP MEMORANDUM OF UNDERSTANDING

AGREEMENT

for

ALABAMA UNIFORM CERTIFICATION PROGRAM (ALUCP)

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between the undersigned, authorized representatives of the Alabama Department of Transportation (ALDOT), and those entities (partner recipients) within the State of Alabama identified as current or future recipients or sub-recipients of funding from the United States Department of Transportation's (USDOT) Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), Federal Transit Administration (FTA), or The Alabama Port Authority.

WHEREAS, a final rule revising the USDOT's regulations for its Disadvantaged Business Enterprise (DBE) Program was published in the Federal Register on February 2, 1999.

WHEREAS, these regulations contained in 49 CFR Part 26.81, as amended, became effective on March 4, 1999.

WHEREAS, all USDOT recipients within each state must sign an agreement establishing a UCP and obtain approval of the agreement by the Secretary of the USDOT.

NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES

The Alabama Unified Certification Program (ALUCP) is established for all USDOT certifying/noncertifying partner recipients within the State of Alabama. The ALUCP is detailed in Attachment A of the Agreement. The purpose of the ALUCP is to comply with the requirements contained in 49 CFR Part 26.81, Subpart E, as amended.

The State of Alabama Transportation Department (ALDOT), as a responsible certifying member, through its Personnel and Compliance Bureau, will take the lead for the ALUCP with regard to:

The maintenance of the ALUCPs DBE Directory listing certified DBEs and agreeing to abide by requirements cited in 49 CFR part 26.81, monitoring activities of USDOT and its Operating Administration (OA).

All Certifying partner recipients agree as follows:

To cooperate fully with the ALUCP and be bound by its decisions or actions upon approval by USDOT.

To comply fully with the terms and conditions of this agreement.

To collect and evaluate information received regarding DBE certification applications, conduct site visits, and make certification decisions as DBE status in accordance with 49 CFR Part 23, and 26.

To promptly provide current information to the DBE Directory as required by and in the manner prescribed within the ALUCP.

To update the DBE Directory with new and updated information.

To retain and make appropriate DBE certification files.

To make information available to other USDOT recipients and other state UCPs in response to questions or complaints, upon written request.

To make timely final decisions on DBE applications as provided in 49 CFR Part 23 and Part 26, Paragraph 26.83 (lc) or within ninety (90) days of receipt of all information.

To provide information on any certified DBE upon request by a ALUCP Member.

To ensure that the ALUCP has sufficient resources and expertise to carry out the requirements contained in 49 CFR Part 26.81, Subpart E, as amended.

Upon approval of Alabama's Uniform Certification Program, the ALDOT, through the PERSONNEL AND COMPLIANCE will immediately assume and consolidate all certification functions and responsibilities. The ALUCP will be operational not later than 18 months following its approval by USDOT

By:_____

Title: _____

Agency:_____

Recipient: _____
(City, Town, County, Etc.)

MAIL TO:
Alabama Department of Transportation
Disadvantaged Business Enterprise Program
2720 Gunter Park Drive West
Montgomery, AL 36109

FORM A-1009
REV. 3/07

EXHIBIT F

NON CERTIFYING MEMBER MEMORANDUM OF UNDERSTANDING

AGREEMENT

for

ALABAMA UNIFORM CERTIFICATION PROGRAM (ALUCP)

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between the undersigned, authorized representatives of the Alabama Department of Transportation (ALDOT), and those entities (partner recipients) within the State of Alabama identified as current or future recipients or sub-recipients of funding from the United States Department of Transportation's (USDOT) Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), Federal Transit Administration (FTA), or The Alabama Port Authority.

WHEREAS, a final rule revising the USDOT's regulations for its Disadvantaged Business Enterprise (DBE) Program was published in the Federal Register on February 2, 1999.

WHEREAS, these regulations contained in 49 CFR Part 26.81, as amended, became effective on March 4, 1999.

WHEREAS, all USDOT recipients within each state must sign an agreement establishing a UCP and obtain approval of the agreement by the Secretary of the USDOT.

NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES

The Alabama Unified Certification Program (ALUCP) is established for all USDOT certifying/noncertifying partner recipients within the State of Alabama. The ALUCP is detailed in Attachment A of the Agreement. The purpose of the ALUCP is to comply with the requirements contained in 49 CFR Part 26.81, Subpart E, as amended.

The State of Alabama Transportation Department (ALDOT), as a responsible certifying member, through its Personnel and Compliance Bureau, will take the lead for the ALUCP with regard to:

The maintenance of all ALUCPs DBE Directory listing certified DBEs and agreeing to abide by regulations cited in 49 CFR Part 26.81, monitoring activities of USDOT and its Operating Administrations (OA).

All Non Certifying partner recipients agree as follows:

To cooperate fully with the ALUCP and be bound by its decisions or actions upon approval by USDOT.

To comply fully with the terms and conditions of this agreement.

To promptly forward DBE applications to the Responsible Certifying Member.

Provide information on any certified DBE upon request by a ALUCP member.

Upon approval of Alabama's Uniform Certification Program, the ALDOT, through the ALUCP will immediately assume and consolidate all certification functions and responsibilities. The ALUCP will be operational not later than 18 months following its approval by USDOT.

By: _____

Title: _____

Agency: _____

Recipient: _____
(City, Town, County, Etc.)

MAIL TO:
Alabama Department of Transportation
Disadvantaged Business Enterprise Program
2720 Gunter Park Drive West
Montgomery, AL 36109

FORM A-1009
REV. 3/07

EXHIBIT G

List of Responsible Certifying Members

ALDOT (Alabama Department of Transportation)
Disadvantaged Business Enterprise (DBE)
2720 Gunter Park Drive W.
Montgomery, Alabama 36109

Alabama State Port Authority
Joseph Threadcraft, P. E.
VP- Technical Services
P. O. Box 1588
Mobile, Alabama 36633

Birmingham Airport Authority
5900 Airport Highway
Birmingham, Alabama 35212
Attn: Larry Holman

Huntsville Airport Authority
1000 Glenn Hearn Blvd., Box 20008
Huntsville, Alabama 35824
Attn: Paul S. Kelly, Jr.

The Wave Transit Authority
110 Beauregard Street
Suite 104
Mobile, Alabama 36602

EXHIBIT H

List of Non- Certifying Sub-Recipients

- Birmingham-Jefferson County Transit Authority
- Centre-Piedmont-Cherokee County Regional Airport Authority
- City of Alexander City
- City of Demopolis
- City of Elba
- City of Foley
- City of Gadsden
- City of Greenville
- City of Huntsville
- City of Lanett
- City of Oneonta
- City of Russellville
- City of Troy
- Dothan Regional Airport
- Gulf Shores, Alabama
- Lawrence County
- Madison County Executive Airport Authority
- Marion County Commission
- Mobile Airport Authority
- Regional Planning Commission of Birmingham
- Shelby County Department of Development Services
- St. Clair County Airport Authority
- Tuscaloosa Trolley
- U.S. Space and Rocket Center

EXHIBIT I

49 CFR PART 23

(ii) The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.

(iii) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects, including those who supply materials and lease equipment.

(iv) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) *Urban Mass Transportation Administration.* (i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

(b) *Obligations of the airport operator*—(1) *Tenants, contractors, and concessionaires.* Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) *Notification of beneficiaries.* The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) *Reports.* Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[35 FR 10080, June 18, 1970, as amended by Amdt. 21-1, 38 FR 5875, Mar. 5, 1973; Amdt. 21-3, 40 FR 14318, Mar. 31, 1975]

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

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APPENDIX A TO PART 23—UNIFORM REPORT OF ACDBE PARTICIPATION

AUTHORITY: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

SOURCE: 70 FR 14508, Mar. 22, 2005, unless otherwise noted.

Subpart A—General

§ 23.1 What are the objectives of this part?

This part seeks to achieve several objectives:

(a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;

(b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;

(c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;

(d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;

(e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and

(f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

§ 23.3 What do the terms used in this part mean?

Administrator means the Administrator of the Federal Aviation Administration (FAA).

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures (13 CFR §121.103(f)) do not apply to this part.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of

each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the ACDBE program.

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a concession that is a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)

Car dealership means an establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pickup trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized in NAICS code 441110.

Concession means one or more of the types of for-profit businesses listed in paragraph (1) or (2) of this definition:

(1) A business, located on an airport subject to this part, that is engaged in the sale of consumer goods or services to the public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.

(2) A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to this part, as long as the activities take place on the airport: Management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

Example to paragraph (2): A supplier of goods or a management contractor maintains its office or primary place of business off the airport. However the supplier provides goods to a retail establishment in the airport; or the management contractor operates the parking facility on the airport. These businesses are considered concessions for purposes of this part.

(3) For purposes of this subpart, a business is not considered to be "located on the airport" solely because it picks up and/or delivers customers under a permit, license, or other agreement. For example, providers of taxi, limousine, car rental, or hotel services are not considered to be located on the airport just because they send shuttles onto airport grounds to pick up passengers or drop them off. A business is considered to be "located on the airport," however, if it has an on-airport facility. Such facilities include in the case of a taxi operator, a dispatcher; in the case of a limousine, a booth selling tickets to the public; in the case of a car rental company, a counter at which its services are sold to the public or a ready return facility; and in the case of a hotel operator, a hotel located anywhere on airport property.

(4) Any business meeting the definition of concession is covered by this subpart, regardless of the name given to the agreement with the recipient, concessionaire, or airport terminal owner or lessee. A concession may be

operated under various types of agreements, including but not limited to the following:

(i) Leases.

(ii) Subleases.

(iii) Permits.

(iv) Contracts or subcontracts.

(v) Other instruments or arrangements.

(5) The conduct of an aeronautical activity is not considered a concession for purposes of this subpart. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators; flight schools; recreational service providers (*e.g.*, sky-diving, parachute-jumping, flying guides); and air tour services.

(6) Other examples of entities that do not meet the definition of a concession include flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service to the airport facility, holding companies, and skycap services under contract with an air carrier or airport.

Concessionaire means a firm that owns and controls a concession or a portion of a concession.

Department (DOT) means the U.S. Department of Transportation, including the Office of the Secretary and the Federal Aviation Administration (FAA).

Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

Good faith efforts means efforts to achieve an ACDBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, or registered domestic partner.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint venture entities are not certified as ACDBEs.

Large hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least one percent of all passenger boardings in the United States.

Management contract or subcontract means an agreement with a recipient or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the recipient. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to this subpart, and be engaged in the sale of consumer goods or provision of services to the public.

Material amendment means a significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope of the concession privilege. Examples of nonmaterial amendments include a change in the name of

the concessionaire or a change to the payment due dates.

Medium hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least 0.25 percent of all passenger boardings in the United States but less than one percent of such passenger boardings.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, and is controlled by Native Hawaiians

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Nonhub primary airport means a commercial service airport that has more than 10,000 passenger boardings each year but less than 0.05 percent of all passenger boardings in the United States.

Part 26 means 49 CFR part 26, the Department of Transportation's disadvantaged business enterprise regulation for DOT-assisted contracts.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the following: The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; the individual's equity in his or her primary place of residence; and other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business), to a maximum of $3 million. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary airport means a commercial service airport that the Secretary determines to have more than 10,000 passengers enplaned annually.

Primary industry classification means the North American Industrial Classification System (NAICS) code designation that best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its Web site (*http://www.ntis.gov/naics*).

Primary recipient means a recipient to which DOT financial assistance is extended through the programs of the FAA and which passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for ACDBE program purposes.

Race-conscious means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.

Race-neutral means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to ACDBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

Small business concern means a for profit business that does not exceed the size standards of § 23.33 of this part.

Small hub airport means a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (*i.e.*, "You must do XYZ" means that recipients must do XYZ).

[70 FR 14608, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

§ 23.5 To whom does this part apply?

If you are a recipient that has received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code, this part applies to you.

§ 23.7 How long do the provisions of this part remain in effect?

Unless extended by the Department, the provisions of this rule will terminate and become inoperative on April 21, 2010.

§ 23.9 What are the nondiscrimination and assurance requirements of this part for recipients?

(a) As a recipient, you must meet the non-discrimination requirements provided in part 26, §26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

(b) You must also take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered by this part.

(c) You must include the following assurances in all concession agreements and management contracts you execute with any firm after April 21, 2005:

(1) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(2) "The concessionaire or contractor agrees to include the above statements

in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements."

§ 23.11 What compliance and enforcement provisions are used under this part?

The compliance and enforcement provisions of part 26 (§§ 26.101 and 26.105 through 26.109) apply to this part in the same way that they apply to FAA recipients and programs under part 26.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

§ 23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 23 and issued after April 21, 2005, express the official positions and views of the Department of Transportation or the Federal Aviation Administration.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, and the FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or the FAA, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

> The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 23.

(c) You may apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation or the FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(d) You can apply for a waiver of any provision of subpart B or D of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate an ACDBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of subpart B or D of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the FAA. The application must include a specific program proposal and address how you will meet the criteria of paragraph (d)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the ACDBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of ACDBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or D of this part;

(ii) Conditions at your airport are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to concession opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and FAA program requirements.

(3) The FAA Administrator has the authority to approve your application. If the Administrator grants your application, you may administer your ACDBE program as provided in your proposal, subject to the following conditions:

(i) ACDBE eligibility is determined as provided in subpart C of this part, and ACDBE participation is counted as provided in §§ 23.53 through 23.55.

(ii) Your level of ACDBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of the your modified program; and

(iv) Any other conditions the Administrator makes on the grant of the waiver.

(4) The Administrator may end a program waiver at any time and require you to comply with this part's provisions. The Administrator may also extend the waiver, if he or she determines that all requirements of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program waiver.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15516, Apr. 2, 2007]

Subpart B—ACDBE Programs

§ 23.21 Who must submit an ACDBE program to FAA, and when?

(a) Except as provided in paragraph (e) of this section, if you are a primary airport that has or was required to have a concessions DBE program prior to April 21, 2005, you must submit a revisesd ACDBE program meeting the requirements of this part to the appropriate FAA regional office for approval.

(1) You must submit this revised program on the same schedule provided for your first submission of overall goals in § 23.45(a) of this part.

(2) Timely submission and FAA approval of your revised ACDBE program is a condition of eligibility for FAA financial assistance.

(3) Until your new ACDBE program is submitted and approved, you must continue to implement your concessions DBE program that was in effect before the effective date of this amendment to part 23, except with respect to any provision that is contrary to this part.

(b) If you are a primary airport that does not now have a DBE concessions program, and you apply for a grant of FAA funds for airport planning and development under 49 U.S.C. 47107 *et seq.*, you must submit an ACDBE program to the FAA at the time of your application. Timely submission and FAA approval of your ACDBE program are conditions of eligibility for FAA financial assistance.

(c) If you are the owner of more than one airport that is required to have an ACDBE program, you may implement one plan for all your locations. If you do so, you must establish a separate ACDBE goal for each location.

(d) If you make any significant changes to your ACDBE program at any time, you must provide the amended program to the FAA for approval before implementing the changes.

(e) If you are a non-primary airport, non-commercial service airport, a general aviation airport, reliever airport, or any other airport that does not have scheduled commercial service, you are not required to have an ACDBE program. However, you must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

§ 23.23 What administrative provisions must be in a recipient's ACDBE program?

(a) If, as a recipient that must have an ACDBE program, the program must include provisions for a policy statement, liaison officer, and directory, as provided in part 26, §§ 26.23, 26.25, and 26.31, as well as certification of ACDBEs as provided by Subpart C of this part. You must include a statement in your program committing you to operating your ACDBE program in a nondiscriminatory manner.

(b) You may combine your provisions for implementing these requirements under this part and part 26 (*e.g.*, a single policy statement can cover both Federally-assisted airport contracts and concessions; the same individual can act as the liaison officer for both part 23 and part 26 matters).

§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

(a) You must include in your ACDBE program a narrative description of the types of measures you intend to make

to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities.

(b) Your ACDBE program must provide for setting goals consistent with the requirements of Subpart D of this part.

(c) Your ACDBE program must provide for seeking ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others.

(d) Your ACDBE program must include race-neutral measures that you will take. You must maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of race-neutral measures you can implement:

(1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;

(2) Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;

(3) When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs

(4) Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;

(5) Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process;

(6) Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and

(7) Establishing a business development program (*see* part 26, § 26.35); technical assistance program; or taking other steps to foster ACDBE participation in concessions.

(e) Your ACDBE program must also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures you can implement:

(1) Establishing concession-specific goals for particular concession opportunities.

(i) If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with a ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

(ii) If the goal applies to purchases and/or leases of goods and services, calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire.

(iii) To be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.

(iv) The administrative procedures applicable to contract goals in part 26, § 26.51–53, apply with respect to concession-specific goals.

(2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.

(3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

(f) Your ACDBE program must require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs.

(g) As provided in § 23.61 of this part, you must not use set-asides and quotas as means of obtaining ACDBE participation.

§ 23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

(a) As a recipient, you must retain sufficient basic information about your program implementation, your certification of ACDBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this part. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.

(b) Beginning March 1, 2006, you must submit an annual report on ACDBE participation using the form found in appendix A to this part. You must submit the report to the appropriate FAA Regional Civil Rights Office.

§ 23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. Your program must describe in detail the level of effort and resources devoted to monitoring and enforcement.

Subpart C—Certification and Eligibility of ACDBEs

§ 23.31 What certification standards and procedures do recipients use to certify ACDBEs?

(a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§ 26.61–91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (*see* part 26, § 26.81).

(b) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

(c) As an airport or UCP, you must review the eligibility of currently certified ACDBE firms to make sure that they meet the eligibility standards of this part.

(1) You must complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later.

(2) You must direct all currently certified ACDBEs to submit to you by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed $47.78 million.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

(1) Banks and financial institutions: $750 million in assets;

(2) Car rental companies: $63.71 million average annual gross receipts over the firm's three previous fiscal years;

(3) Companies providing pay telephones: 1,500 employees;

(4) Automobile dealers: 200 employees.

(c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by state and local governments as the basis for this adjustment. These adjustments are made every two years from May 2, 2007. The Department publishes a final rule informing the public of each adjustment.

[72 FR 15617, Apr. 2, 2007]

§ 23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?

The personal net worth standard used in determining eligibility for purposes of this part is $750,000. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

§ 23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

(a) You must presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23.

(b) However, before certifying such a firm, you must ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program. In addition, you are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not do work relevant to the airport's concessions program.

§ 23.39 What other certification requirements apply in the case of ACDBEs?

(a) The provisions of part 26, §§ 26.83 (c)(2) through (c)(6) do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:

(1) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;

(2) Analyze the ownership of stock of the firm, if it is a corporation;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including any concession contracts or other contracts it may have received;

(5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;

(6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.

(b) In reviewing the affidavit required by part 26, § 26.83(j), you must ensure that the ACDBE firm meets the applicable size standard in § 23.33.

(c) For purposes of this part, the term prime contractor in part 26, § 26.87(i) includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

(d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of part 26, § 26.73(i) do not apply under this part. The eligibility of ANC-owned firms for purposes of this part is governed by § 26.73(h).

(e) When you remove a concessionaire's eligibility after the concessionaire has entered a concession agreement, because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible DBE, you may continue to count the concessionaire's participation toward DBE goals during the remainder of the current concession agreement. However, you must not count the concessionaire's participation toward DBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (*e.g.*, in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

(f) When UCPs are established in a state (see part 26, § 26.81), the UCP, rather than individual recipients, certifies firms for the ACDBE concession program.

(g) You must use the Uniform Application Form found in appendix F to part 26. However, you must instruct applicants to take the following additional steps:

(1) In the space available in section 2(B)(7) of the form, the applicant must state that it is applying for certification as an ACDBE.

(2) With respect to section 4(C) of the form, the applicant must provide information on an attached page concerning the address/location, ownership/lease status, current value of property or lease, and fees/lease payments paid to the airport.

(3) The applicant need not complete section 4(I) and (J). However, the applicant must provide information on an attached page concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession.

(h) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which a recipient or UCPs have certified as ACDBEs.

(i) You must use the certification standards of this part to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

Subpart D—Goals, Good Faith Efforts, and Counting

§ 23.41 What is the basic overall goal requirement for recipients?

(a) If you are a recipient who must implement an ACDBE program, you must, except as provided in paragraph (b) of this section, establish two separate overall ACDBE goals. The first is for car rentals; the second is for concessions other than car rentals.

(b) If your annual car rental concession revenues, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed $200,000, you are not required to submit a car rental overall goal. If your annual revenues for concessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed $200,000, you are not required to submit a non-car rental overall goal.

(c) Each overall goal must cover a three-year period. You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report to the FAA any significant adjustments that you make to your goal in the time before your next scheduled submission.

(d) Your goals established under this part must provide for participation by all certified ACDBEs and may not be subdivided into group-specific goals.

(e) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

(a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.

(b) Stakeholders with whom you must consult include, but are not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the recipient's efforts to increase participation of ACDBEs.

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

(a) You must submit your overall goals to the appropriate FAA Regional Civil Rights Office for approval. Your first set of overall goals meeting the requirements of this subpart are due on the following schedule:

(1) If you are a large or medium hub primary airport on April 21, 2005, by January 1, 2006. You must make your next submissions by October 1, 2008.

(2) If you are a small hub primary airport on April 21, 2005, by October 1, 2006.

(3) If you are a nonhub primary airport on April 21, 2005, by October 1, 2007.

(b) You must then submit new goals every three years after the date that applies to you.

(c) Timely submission and FAA approval of your overall goals is a condition of eligibility for FAA financial assistance.

(d) In the time before you make your first submission under paragraph (a) of this section, you must continue to use the overall goals that have been approved by the FAA before the effective date of this part.

(e) Your overall goal submission must include a description of the method used to calculate your goals and the data you relied on. You must "show your work" to enable the FAA to understand how you concluded your goals were appropriate. This means that you must provide to the FAA the data, calculations, assumptions, and reasoning used in establishing your goals.

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of race-neutral and race-conscious means, respectively, and the basis for making this projection (*see* § 23.51(d)(5))

(g) FAA may approve or disapprove the way you calculated your goal, including your race-neutral/race-conscious "split," as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (*i.e.*, the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or race-conscious/race-neutral "split." The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding on you.

(i) If a new concession opportunity the estimated average annual gross revenues of which are anticipated to be $200,000 or greater arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall goal to the FAA for approval at least six months before executing the concession agreement for the new concession opportunity.

§ 23.47 What is the base for a recipient's goal for concessions other than car rentals?

(a) As a recipient, the base for your goal includes the total gross receipts of concessions, except as otherwise provided in this section.

(b) This base does not include the gross receipts of car rental operations.

(c) The dollar amount of a management contract or subcontract with a non-ACDBE and the gross receipts of business activities to which a management or subcontract with a non-ACDBE pertains are not added to this base.

(d) This base does not include any portion of a firm's estimated gross receipts that will not be generated from a concession.

Example to paragraph (d): A firm operates a restaurant in the airport terminal which serves the traveling public and, under the same lease agreement, provides in-flight catering service to air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering services are not.

§ 23.49 What is the base for a recipient's goal for car rentals?

Except in the case where you use the alternative goal approach of § 23.51(c)(5)(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

§ 23.51 How are a recipient's overall goals expressed and calculated?

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§ 23.47–23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.

(1) This percentage is the estimated ACDBE participation that would occur if there were a "level playing field" for firms to work as concessionaires for your airport.

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your

market area have suffered discrimination or its effects in connection with concession opportunities or related business opportunities.

(3) You must complete the goal-setting process separately for each of the two overall goals identified in § 23.41 of this part.

(b)(1) Each overall concessions goal must be based on demonstrable evidence of the availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in your ACDBE program (hereafter, the "relative availability of ACDBEs").

(2) You cannot simply rely on the 10 percent national aspirational goal, your previous overall goal, or past ACDBE participation rates in your program without reference to the relative availability of ACDBEs in your market.

(3) Your market area is defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located. Your market area may be different for different types of concessions.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of ACDBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining the evidence available to you. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the FAA.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able ACDBEs in your market area from your ACDBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market area that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their Web site, *http://www.census.gov/epcd/cbp/view/cbpview.html.*) Divide the number of ACDBEs by the number of all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(2) *Use an Active Participants List.* Determine the number of ACDBEs that have participated or attempted to participate in your airport concessions program in previous years. Determine the number of all businesses that have participated or attempted to participate in your airport concession program in previous years. Divide the number of ACDBEs who have participated or attempted to participate by the number for all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another recipient.* If another airport or other DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* (i) You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of ACDBEs in your market area.

(ii) In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services. In this case, you would calculate your car rental overall goal by dividing the estimated dollar value of such purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies.

(d) *Step 2.* Once you have calculated a base figure, you must examine all relevant evidence reasonably available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include, but are not limited to:

(i) The current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.

(2) If your base figure is the goal of another recipient, you must adjust it for differences in your market area and your concessions program.

(3) If available, you must consider evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of ACDBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.

(4) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination, or the effects of an ongoing ACDBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(5) Among the information you submit with your overall goal (*see* 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (*see* §§ 26.51(c)).

(e) You are not required to obtain prior FAA concurrence with your overall goal (i.e., with the number itself). However, if the FAA's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(f) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the FAA Administrator for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(1) Reflect the relative availability of ACDBEs in your local market area to the maximum extent feasible given the data available to you; and

(2) Avoid imposing undue burdens on non-ACDBEs.

§ 23.53 How do car rental companies count ACDBE participation toward their goals?

(a) As a car rental company, you may, in meeting the goal the airport has set for you, include purchases or leases of vehicles from any vendor that is a certified ACDBE.

(b) As a car rental company, if you choose to meet the goal the airport has set for you by including purchases or leases of vehicles from an ACDBE vendor, you must also submit to the recipient documentation of the good faith efforts you have made to obtain ACDBE participation from other ACDBE providers of goods and services.

(c) While this part does not require you to obtain ACDBE participation through direct ownership arrangements, you may count such participation toward the goal the airport has set for you.

(d) The following special rules apply to counting participation related to car rental operations:

(1) Count the entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) Count the entire amount of the fee or commission charged by a ACDBE to manage a car rental concession under an agreement with the concessionaire toward ACDBE goals, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) Do not count any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.

(e) For other goods and services, count participation toward ACDBE goals as provided in part 26, §26.55 and §23.55 of this part. In the event of any conflict between these two sections, §23.55 controls.

(f) If you have a national or regional contract, count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract. Use the proportion of your applicable gross receipts as the basis for making this pro-rated assignment of ACDBE participation.

Example to paragraph (f): Car Rental Company X signs a regional contract with an ACDBE car dealer to supply cars to all five airports in a state. The five airports each account for 20 percent of X's gross receipts in the state. Twenty percent of the value of the cars purchased through the ACDBE car dealer would count toward the goal of each airport.

§23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

(a) You count only ACDBE participation that results from a commercially useful function. For purposes of this part, the term commercially useful function has the same meaning as in part 26, §26.55(c), except that the requirements of §26.55(c)(3) do not apply to concessions.

(b) Count the total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE toward the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.

(c) When an ACDBE performs as a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement.

(d) When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.

(e) Count the entire amount of fees or commissions charged by an ACDBE firm for a *bona fide* service, provided that, as the recipient, you determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.

(f) Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, §26.55(e)(1)(ii).

(g) Count 100 percent of the cost of goods purchased or leased from a ACDBE regular dealer. For purposes of this part, the term "regular dealer" has the same meaning as in part 26, §26.55(e)(2)(ii).

(h) Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:

(1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

(2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar

services. Do not count any portion of the cost of goods themselves.

(i) If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm's participation toward ACDBE goals.

(j) Do not count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. However, if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or renewals of such contracts or agreements).

(k) Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out").

(l) Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in noncompliance only if you have failed to administer your ACDBE program in good faith.

(b) If your ACDBE participation falls short of your overall goals, FAA may require you to submit to the FAA a statement of the reasons why you were unable to meet it and the steps you are taking to meet your overall goals or to adjust them based on changed circumstances.

(c) In response to your submission, FAA may require you to implement appropriate remedial measures,

§ 23.59 What is the role of the statutory 10 percent goal in the ACDBE program?

(a) The statute authorizing the ACDBE program provides that, except to the extent the Secretary determines otherwise, not less than 10 percent of concession businesses are to be ACDBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in airport concessions.

(c) The national 10 percent aspirational goal does not authorize or require recipients to set overall or concession-specific goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

You must not use quotas or set-asides for ACDBE participation in your program.

Subpart E—Other Provisions

§ 23.71 Does a recipient have to change existing concession agreements?

Nothing in this part requires you to modify or abrogate an existing concession agreement (one executed before April 21, 2005) during its term. When an extension or option to renew such an agreement is exercised, or when a material amendment is made, you must assess potential for ACDBE participation and may, if permitted by the agreement, use any means authorized by this part to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

§ 23.73 What requirements apply to privately-owned or leased terminal buildings?

(a) If you are a recipient who is required to implement an ACDBE program on whose airport there is a privately-owned or leased terminal building that has concessions, or any portion of such a building, this section applies to you.

(b) You must pass through the applicable requirements of this part to the private terminal owner or lessee via your agreement with the owner or lessee or by other means. You must ensure that the terminal owner or lessee complies with the requirements of this part.

(c) If your airport is a primary airport, you must obtain from the terminal owner or lessee the goals and other elements of the ACDBE program required under this part. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this part.

(d) If the terminal building is at a non-primary commercial service airport or general aviation airport or reliever airport, you must ensure that the owner complies with the requirements in §23.21(e).

§23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?

(a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for concessions. For purposes of this section, a long-term agreement is one having a term longer than five years.

(b) You may enter into a long-term, exclusive concession agreement only under the following conditions:

(1) Special local circumstances exist that make it important to enter such agreement, and

(2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.

(c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional office:

(1) A description of the special local circumstances that warrant a long-term, exclusive agreement.

(2) A copy of the draft and final leasing and subleasing or other agreements. This long-term, exclusive agreement must provide that:

(i) A number of ACDBEs that reasonably reflects their availability in your market area, in the absence of discrimination, to do the types of work required will participate as concessionaires throughout the term of the agreement and account for at a percentage of the estimated annual gross receipts equivalent to a level set in accordance with §§23.47 through 23.49 of this part.

(ii) You will review the extent of ACDBE participation before the exercise of each renewal option to consider whether an increase or decrease in ACDBE participation is warranted.

(iii) An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.

(3) Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership.

(4) Documentation that ACDBE participants are properly certified.

(5) A description of the type of business or businesses to be operated (*e.g.*, location, storage and delivery space, "back-of-the-house facilities" such as kitchens, window display space, advertising space, and other amenities that will increase the ACDBE's chance to succeed).

(6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE.

(7) Information on the estimated gross receipts and net profit to be earned by the ACDBE.

§23.77 Does this part preempt local requirements?

(a) In the event that a State or local law, regulation, or policy differs from the requirements of this part, the recipient must, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of this part.

(b) You must clearly identify any State or local law, regulation, or policy

pertaining to minority, women's, or disadvantaged business enterprise concerning airport concessions that adds to, goes beyond, or imposes more stringent requirements than the provisions of this part. FAA will determine whether such a law, regulation, or policy conflicts with this part, in which case the requirements of this part will govern.

(c) If not deemed in conflict by the FAA, you must write and administer such a State or local law, policy, or regulation separately from the ACDBE program.

(d) You must provide copies of any such provisions and the legal authority supporting them to the FAA with your ACDBE program submission. FAA will not approve an ACDBE program if there are such provisions that conflict with the provisions of this part.

(e) However, nothing in this part preempts any State or local law, regulation, or policy enacted by the governing body of a recipient, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with this part.

§ 23.79 Does this part permit recipients to use local geographic preferences?

No. As a recipient you must not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives an ACDBE located in one place (*e.g.*, your local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

APPENDIX A TO PART 23—UNIFORM REPORT OF ACDBE PARTICIPATION

INSTRUCTIONS FOR UNIFORM REPORT OF ACDBE PARTICIPATION

1. Insert name of airport receiving FAA financial assistance and AIP number.

2. Provide the name and contact information (phone, fax, e-mail) for the person FAA should contact with questions about the report.

3a. Provide the annual reporting period to which the report pertains (*e.g.*, October 2005–September 2006).

3b. Provide the date on which the report is submitted to FAA.

4. This block and blocks 5 and 6 concern *non-car rental* goals and participation only. In this block, provide the overall non-car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

5. For purposes of this block and blocks 6, 8, and 9, the participation categories listed at the left of the block are the following: "Prime Concessions" are concessions who have a direct relationship with the airport (*e.g.*, a company who has a lease agreement directly with the airport to operate a concession). A "subconcession" is a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport. A "management contract" is an agreement between the airport and a firm to manage a portion of the airport's facilities or operations (*e.g.*, manage the parking facilities). "Goods/services" refers to those goods and services purchased by the airport itself or by concessionaires and management contractors from certified DBEs.

Block 5 concerns *all* non-car rental concession activity covered by 49 CFR part 23 during the reporting period, both new or continuing.

In Column A, enter the total concession gross revenues for concessionaires (prime and sub) and purchases of goods and services (ACDBE and non-ACDBE combined) at the airport. In Column B, enter the number of lease agreements, contracts, etc. in effect or taking place during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBE and non-ACDBE combined).

Because, by statute, non-ACDBE management contracts do not count as part of the base for ACDBE goals, the cells for total management contract participation and ACDBE participation as a percentage of total management contracting dollars are not intended to be filled in blocks 5, 6, 8, and 9.

In Column C, enter the total gross revenues in each participation category (ACDBEs) only. In Column D, enter the number of lease agreements, contracts, etc., in effect or entered into during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBEs only).

Columns E and F are subsets of Column C: break out the total gross revenues listed in Column C into the portions that are attributable to race-conscious and race-neutral measures, respectively. Column G is a percentage calculation. It answers the question, what percentage of the numbers in Column A is represented by the corresponding numbers in Column C?

6. The numbers in this Block concern only *new* non-car rental concession opportunities that arose during the current reporting period. In other words, the information requested in Block 6 is a subset of that requested in Block 5. Otherwise, this Block is filled out in the same way as Block 5.

7. Blocks 7–9 concern car rental goals and participation. In Block 7, provide the overall car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

8. Block 8 is parallel to Block 5, except that it is for car rentals. The instructions for filling it out are the same as for Block 5.

9. Block 9 is parallel to Block 6, except that it is for car rentals. The information requested in Block 9 is a subset of that requested in Block 8. The instructions for filling it out are the same as for Block 6.

10. Block 10 instructs recipients to bring forward the cumulative ACDBE participation figures from Blocks 5 and 8, breaking down these figures by race and gender categories. Participation by non-minority women-owned firms should be listed in the "non-minority women" column. Participation by firms owned by minority women should be listed in the appropriate minority group column. The "other" column should be used to reflect participation by individuals who are not a member of a presumptively disadvantaged group who have been found disadvantaged on a case-by-case basis.

11. This block instructs recipients to attach five information items for each ACDBE firm participating in its program during the reporting period. If the firm's participation numbers are reflected in Blocks 5–6 and/or 8–9, the requested information about that firm should be attached in response to this item.

UNIFORM REPORT OF ACDBE PARTICIPATION

1. Name of Recipient and AIP Number:
2. Contact Information:
3a. Reporting Period:
3b. Date of Report:
4. Current Non-Car Rental ACDBE Goal: Race Conscious Goal ___% Race Neutral Goal ___% Overall Goal ___%

5. Non-car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions. Subconcessions. Management Contracts ..... Goods/Services. Totals.	XXXXXXX	XXXXXXX	.....	.....	.....	.....	XXXXXX

6. Non-Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions. Subconcessions. Management Contracts ..... Goods/Services. Totals.	XXXXXXX	XXXXXXX	.....	.....	.....	XXXXXX	.....

7. Current Car Rental ACDBE Goal: Race Conscious Goal ___% Race Neutral Goal ___% Overall Goal ___%

8. Car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions. Subconcessions. Goods/Services. Totals.							

9. Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions. Subconcessions.							

8. Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Goods/Services. Totals.							

10. Cumulative ACDBE participation by race/gender	A Black Americans	B Hispanic Americans	C Asian-Pacific Americans	D Asian-Indian Americans	E Native Americans	F Non-minority Women	G Other	H Totals
Car Rental. Non-Car Rental. Totals.								

11. On an attachment, list the following information for each ACDBE firm participating in your program during the period of this report: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of agreement, including options to renew; (4) Dates that material amendments have been or will be made to agreement (if known); (5) Estimated gross receipts for the firm during this reporting period.

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Subpart A—General

Sec.

24.1 Purpose.
24.2 Definitions and acronyms.
24.3 No duplication of payments.
24.4 Assurances, monitoring and corrective action.
24.5 Manner of notices.
24.6 Administration of jointly-funded projects.
24.7 Federal Agency waiver of regulations.
24.8 Compliance with other laws and regulations.
24.9 Recordkeeping and reports.
24.10 Appeals.

Subpart B—Real Property Acquisition

24.101 Applicability of acquisition requirements.
24.102 Basic acquisition policies.
24.103 Criteria for appraisals.
24.104 Review of appraisals.
24.105 Acquisition of tenant-owned improvements.
24.106 Expenses incidental to transfer of title to the Agency.
24.107 Certain litigation expenses.
24.108 Donations.

Subpart C—General Relocation Requirements

24.201 Purpose.
24.202 Applicability.
24.203 Relocation notices.
24.204 Availability of comparable replacement dwelling before displacement.
24.205 Relocation planning, advisory services, and coordination.
24.206 Eviction for cause.
24.207 General requirements claims for relocation payments.
24.208 Aliens not lawfully present in the United States.
24.209 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

24.301 Payment for actual reasonable moving and related expenses.
24.302 Fixed payment for moving expenses'residential moves.
24.303 Related nonresidential eligible expenses.
24.304 Reestablishment expenses'nonresidential moves.
24.305 Fixed payment for moving expenses'nonresidential moves.
24.306 Discretionary utility relocation payments.

Subpart E—Replacement Housing Payments

24.401 Replacement housing payment for 180-day homeowner-occupants.
24.402 Replacement housing payment for 90-day occupants.
24.403 Additional rules governing replacement housing payments.
24.404 Replacement housing of last resort.

Subpart F—Mobile Homes

24.501 Applicability.
24.502 Replacement housing payment for 180-day mobile homeowner displaced

EXHIBIT J

49 CFR PART 26

§ 25.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss" or "Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 25.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ 25.500 through 25.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§ 25.600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

§ 25.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 49 CFR part 21.

[65 FR 52895, Aug. 30, 2000]

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Subpart A—General

Sec.

26.1 What are the objectives of this part?
26.3 To whom does this part apply?
26.5 What do the terms used in this part mean?
26.7 What discriminatory actions are forbidden?
26.9 How does the Department issue guidance and interpretations under this part?
26.11 What records do recipients keep and report?
26.13 What assurances must recipients and contractors make?
26.15 How can recipients apply for exemptions or waivers?

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

26.21 Who must have a DBE program?
26.23 What is the requirement for a policy statement?
26.25 What is the requirement for a liaison officer?
26.27 What efforts must recipients make concerning DBE financial institutions?
26.29 What prompt payment mechanisms must recipients have?
26.31 What requirements pertain to the DBE directory?
26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
26.35 What role do business development and mentor-protégé programs have in the DBE program?
26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

Subpart C—Goals, Good Faith Efforts, and Counting

26.41 What is the role of the statutory 10 percent goal in this program?
26.43 Can recipients use set-asides or quotas as part of this program?
26.45 How do recipients set overall goals?

26.47 Can recipients be penalized for failing to meet overall goals?
26.49 How are overall goals established for transit vehicle manufacturers?
26.51 What means do recipients use to meet overall goals?
26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?
26.55 How is DBE participation counted toward goals?

Subpart D—Certification Standards

26.61 How are burdens of proof allocated in the certification process?
26.63 What rules govern group membership determinations?
26.65 What rules govern business size determinations?
26.67 What rules determine social and economic disadvantage?
26.69 What rules govern determinations of ownership?
26.71 What rules govern determinations concerning control?
26.73 What are other rules affecting certification?

Subpart E—Certification Procedures

26.81 What are the requirements for Unified Certification Programs?
26.83 What procedures do recipients follow in making certification decisions?
26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?
26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?
26.86 What rules govern recipients' denials of initial requests for certification?
26.87 What procedures does a recipient use to remove a DBE's eligibility?
26.89 What is the process for certification appeals to the Department of Transportation?
26.91 What actions do recipients take following DOT certification appeal decisions?

Subpart F—Compliance and Enforcement

26.101 What compliance procedures apply to recipients?
26.103 What enforcement actions apply in FHWA and FTA programs?
26.105 What enforcement actions apply in FAA programs?
26.107 What enforcement actions apply to firms participating in the DBE program?
26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

APPENDIX A TO PART 26—GUIDANCE CONCERNING GOOD FAITH EFFORTS
APPENDIX B TO PART 26—UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS FORM
APPENDIX C TO PART 26—DBE BUSINESS DEVELOPMENT PROGRAM GUIDELINES
APPENDIX D TO PART 26—MENTOR-PROTÉGÉ PROGRAM GUIDELINES
APPENDIX E TO PART 26—INDIVIDUAL DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE
APPENDIX F TO PART 26—UNIFORM CERTIFICATION APPLICATION FORM

AUTHORITY: 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

SOURCE: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A—General

§ 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

(a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;

(b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;

(c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;

(d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;

(e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;

(f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

(g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

(1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914,

or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102–240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA–21, Pub. L. 105–178.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

§ 26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or *DBE* means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553–6847; or via the Internet at: *http://www.ntis.gov/product/naics.htm.*

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003]

§ 26.7 What discriminatory actions are forbidden?

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of

a particular race, color, sex, or national origin.

§ 26.9 How does the Department issue guidance and interpretations under this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

> The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15517, Apr. 2, 2007]

§ 26.11 What records do recipients keep and report?

(a) [Reserved]

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than $500,000; $500,000–$1 million; $1–2 million; $2–5 million; etc.) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (*e.g.*, collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000]

§ 26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

> The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

§ 26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§ 26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding $250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding $250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

§ 26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

§ 26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within

30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§ 26.31 What requirements pertain to the DBE directory?

You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. You must revise your directory at least annually and make updated information available to contractors and the public on request.

§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with § 26.51, to unsure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully

in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

(c) This mechanism must provide for a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart C—Goals, Good Faith Efforts, and Counting

§ 26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§ 26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) $250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in § 26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, *www.census.gov/epcd/cbp/view/cbpview.html.*) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming fiscal year;

(2) If you are an FTA or FAA recipient, as a percentage of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the forthcoming fiscal year. In appropriate cases, the FTA or FAA Administrator may permit you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects.

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration for review on August 1 of each year, unless the Administrator of the concerned operating administration establishes a different submission date.

(2) If you are an FTA or FAA recipient and set your overall goal on a project or grant basis, you must submit the goal for review at a time determined by the FTA or FAA Administrator.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see § 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with the your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could

be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003]

§ 26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

§ 26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider

its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination,

you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year.

Example to Paragraph (f)(1): Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to Paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to Paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to Paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

(v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and

(3) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

(i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals,

as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate for convenience a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without your prior written consent.

(2) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(3) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(g) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

§ 26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the

DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i)).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart D—Certification Standards

§ 26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (*see* § 26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of

proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of $20.41 million.

(c) The Department adjusts the number in paragraph (b) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department issues a final rule by August 10 of each year making this adjustment.

[72 FR 15617, Apr. 2, 2007]

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2) (i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed $750,000.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided*, that you must transmit this information to DOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds $750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds $750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal

net worth exceeds $750,000 shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003]

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a

business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§ 26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which

does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in § 26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees.

The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the

firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

§ 26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor must you refuse to certify a firm solely on the basis that it is a newly formed firm.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

(l) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendents of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

Subpart E—Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certifi-

a concern's voting stock, and such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, SBA presumes that each such person controls or has the power to control the concern whose size is at issue. This presumption may be rebutted by a showing that such control or power to control does not in fact exist.

(3) If a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the concern's Board of Directors and CEO or President will be deemed to have the power to control the concern in the absence of evidence to the contrary.

(d) *Affiliation arising under stock options, convertible securities, and agreements to merge.* (1) In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(2) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered "agreements in principle" and are thus not given present effect.

(3) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(4) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals', concerns' or other entities' ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

(e) *Affiliation based on common management.* Affiliation arises where one or more officers, directors, managing members, or partners who control the board of directors and/or management of one concern also control the board of directors or management of one or more other concerns.

(f) *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(g) *Affiliation based on the newly organized concern rule.* Affiliation may arise where former officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, principal stockholders, managing members, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. A "key employee" is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(h) *Affiliation based on joint ventures.* A joint venture is an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent

basis for conducting business generally. This means that the joint venture entity cannot submit more than three offers over a two year period, starting from the date of the submission of the first offer. A joint venture may or may not be in the form of a separate legal entity. The joint venture is viewed as a business entity in determining power to control its management. SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(4) of this section.

(1) Parties to a joint venture are affiliates if any one of them seeks SBA financial assistance for use in connection with the joint venture.

(2) Except as provided in paragraph (h)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers are affiliated with each other with regard to the performance of that contract.

(3) *Exception to affiliation for certain joint ventures.* (i) A joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under paragraph (h) of this section so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(A) The procurement qualifies as a "bundled" requirement, at any dollar value, within the meaning of §125.2(d)(1)(i) of this chapter; or

(B) The procurement is other than a "bundled" requirement within the meaning of §125.2(d)(1)(i) of this chapter, and:

(1) For a procurement having a receipts based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(2) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds $10 million.

(ii) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer for a competitive 8(a) procurement without regard to affiliation under paragraph (h) of this section so long as the requirements of §124.513(b)(1) of this chapter are met.

(iii) Two firms approved by SBA to be a mentor and protégé under 13 CFR 124.520 may joint venture as a small business for any Federal Government procurement, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in 13 CFR 124.519.

(4) A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor that performs primary and vital requirements of a contract, or of an order under a multiple award schedule contract, or a subcontractor upon which the prime contractor is unusually reliant. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or the teaming agreement), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation.

(5) For size purposes, a concern must include in its receipts its proportionate share of joint venture receipts, and in its total number of employees its proportionate share of joint venture employees.

(i) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise, however,

through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

[61 FR 3286, Jan. 31, 1996, as amended at 62 FR 26381, May 14, 1997; 63 FR 35738, June 30, 1998; 64 FR 57370, Oct. 25, 1999; 65 FR 30840, May 15, 2000; 65 FR 35812, June 6, 2000; 65 FR 45833, July 26, 2000; 69 FR 29201, May 21, 2004; 70 FR 51248, Aug. 30, 2005]

§ 121.104 How does SBA calculate annual receipts?

(a) *Receipts* means "total income" (or in the case of a sole proprietorship, "gross income") plus "cost of goods sold" as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.

(1) The Federal income tax return and any amendments filed with the IRS on or before the date of self-certification must be used to determine the size status of a concern. SBA will not use tax returns or amendments filed with the IRS after the initiation of a size determination.

(2) When a concern has not filed a Federal income tax return with the IRS for a fiscal year which must be included in the period of measurement, SBA will calculate the concern's annual receipts for that year using any other available information, such as the concern's regular books of account, audited financial statements, or information contained in an affidavit by a person with personal knowledge of the facts.

(b) *Completed fiscal year* means a taxable year including any short year. "Taxable year" and "short year" have the meanings attributed to them by the IRS.

(c) *Period of measurement.* (1) Annual receipts of a concern that has been in business for three or more completed fiscal years means the total receipts of the concern over its most recently completed three fiscal years divided by three.

(2) Annual receipts of a concern which has been in business for less than three complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52.

(d) *Annual receipts of affiliates.* (1) The average annual receipts size of a business concern with affiliates is calculated by adding the average annual receipts of the business concern with the average annual receipts of each affiliate.

(2) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status includes the receipts of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

(3) If the business concern or an affiliate has been in business for a period of

less than three years, the receipts for the fiscal year with less than a 12 month period are annualized in accordance with paragraph (c)(2) of this section. Receipts are determined for the concern and its affiliates in accordance with paragraph (c) of this section even though this may result in using a different period of measurement to calculate an affiliate's annual receipts.

(4) The annual receipts of a former affiliate are not included if affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

(e) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 48604, Aug. 9, 2000; 69 FR 29203, May 21, 2004]

§ 121.105 How does SBA define "business concern or concern"?

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

(2) A small agricultural cooperative is an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C.A. 1141j) whose size does not exceed the size standard established by SBA for other similar agricultural small business concerns. A small agricultural cooperative's member shareholders are not considered to be affiliates of the cooperative by virtue of their membership in the cooperative. However, a business concern or cooperative that does not qualify as small under this part may not be a member of a small agricultural cooperative.

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

(c) A firm will not be treated as a separate business concern if a substantial portion of its assets and/or liabilities are the same as those of a predecessor entity. In such a case, the annual receipts and employees of the predecessor will be taken into account in determining size.

[61 FR 3286, Jan. 31, 1996, as amended at 70 FR 51248, Aug. 30, 2005]

§ 121.106 How does SBA calculate number of employees?

(a) In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (i.e., individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

(b) Where the size standard is number of employees, the method for determining a concern's size includes the following principles:

(1) The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.

(2) Part-time and temporary employees are counted the same as full-time employees.

(3) If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(4)(i) The average number of employees of a business concern with affiliates is calculated by adding the average number of employees of the business concern with the average number of employees of each affiliate. If a concern has acquired an affiliate or been

acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

(ii) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29203, May 21, 2004]

§ 121.107 How does SBA determine a concern's "primary industry"?

In determining the primary industry in which a concern or a concern combined with its affiliates is engaged, SBA considers the distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year. SBA may also consider other factors, such as the distribution of patents, contract awards, and assets.

§ 121.108 What are the penalties for misrepresentation of size status?

In addition to other laws which may be applicable, section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs. Section 16(a) of the Act also provides, in part, for criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing in any way the actions of the Agency.

SIZE STANDARDS USED TO DEFINE SMALL BUSINESS CONCERNS

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

The size standards described in this section apply to all SBA programs unless otherwise specified in this part. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
Sector 11—Agriculture, Forestry, Fishing and Hunting			
Subsector 111—Crop Production			
111110	Soybean Farming	$0.75	
111120	Oilseed (except Soybean) Farming	$0.75	
111130	Dry Pea and Bean Farming	$0.75	
111140	Wheat Farming	$0.75	
111150	Corn Farming	$0.75	
111160	Rice Farming	$0.75	
111191	Oilseed and Grain Combination Farming	$0.75	
111199	All Other Grain Farming	$0.75	
111211	Potato Farming	$0.75	
111219	Other Vegetable (except Potato) and Melon Farming	$0.75	
111310	Orange Groves	$0.75	
111320	Citrus (except Orange) Groves	$0.75	
111331	Apple Orchards	$0.75	
111332	Grape Vineyards	$0.75	
111333	Strawberry Farming	$0.75	
111334	Berry (except Strawberry) Farming	$0.75	
111335	Tree Nut Farming	$0.75	
111336	Fruit and Tree Nut Combination Farming	$0.75	
111339	Other Noncitrus Fruit Farming	$0.75	
111411	Mushroom Production	$0.75	
111419	Other Food Crops Grown Under Cover	$0.75	
111421	Nursery and Tree Production	$0.75	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
111422	Floriculture Production	$0.75	
111910	Tobacco Farming	$0.75	
111920	Cotton Farming	$0.75	
111930	Sugarcane Farming	$0.75	
111940	Hay Farming	$0.75	
111991	Sugar Beet Farming	$0.75	
111992	Peanut Farming	$0.75	
111998	All Other Miscellaneous Crop Farming	$0.75	
	Subsector 112—Animal Production		
112111	Beef Cattle Ranching and Farming	$0.75	
112112	Cattle Feedlots	$2.00	
112120	Dairy Cattle and Milk Production	$0.75	
112210	Hog and Pig Farming	$0.75	
112310	Chicken Egg Production	$11.5	
112320	Broilers and Other Meat Type Chicken Production	$0.75	
112330	Turkey Production	$0.75	
112340	Poultry Hatcheries	$0.75	
112390	Other Poultry Production	$0.75	
112410	Sheep Farming	$0.75	
112420	Goat Farming	$0.75	
112511	Finfish Farming and Fish Hatcheries	$0.75	
112512	Shellfish Farming	$0.75	
112519	Other Aquaculture	$0.75	
112910	Apiculture	$0.75	
112920	Horse and Other Equine Production	$0.75	
112930	Fur-Bearing Animal and Rabbit Production	$0.75	
112990	All Other Animal Production	$0.75	
	Subsector 113—Forestry and Logging		
113110	Timber Tract Operations	$6.5	
113210	Forest Nurseries and Gathering of Forest Products	$6.5	
113310	Logging		500
	Subsector 114—Fishing, Hunting and Trapping		
114111	Finfish Fishing	$4.0	
114112	Shellfish Fishing	$4.0	
114119	Other Marine Fishing	$4.0	
114210	Hunting and Trapping	$4.0	
	Subsector 115—Support Activities for Agriculture and Forestry		
115111	Cotton Ginning	$6.5	
115112	Soil Preparation, Planting, and Cultivating	$6.5	
115113	Crop Harvesting, Primarily by Machine	$6.5	
115114	Postharvest Crop Activities (except Cotton Ginning)	$6.5	
115115	Farm Labor Contractors and Crew Leaders	$6.5	
115116	Farm Management Services	$6.5	
115210	Support Activities for Animal Production	$6.5	
115310	Support Activities for Forestry	[17] 16.5	
EXCEPT	Forest Fire Suppression [17]	[17] 16.5	
EXCEPT	Fuels Management Services [17]		
	Sector 21—Mining, Quarrying, and Oil and Gas Extraction		
	Subsector 211—Oil and Gas Extraction		
211111	Crude Petroleum and Natural Gas Extraction		500
211112	Natural Gas Liquid Extraction		500
	Subsector 212—Mining (except Oil and Gas)		
212111	Bituminous Coal and Lignite Surface Mining		500
212112	Bituminous Coal Underground Mining		500
212113	Anthracite Mining		500
212210	Iron Ore Mining		500
212221	Gold Ore Mining		500
212222	Silver Ore Mining		500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
212231	Lead Ore and Zinc Ore Mining		500
212234	Copper Ore and Nickel Ore Mining		500
212291	Uranium-Radium-Vanadium Ore Mining		500
212299	All Other Metal Ore Mining		500
212311	Dimension Stone Mining and Quarrying		500
212312	Crushed and Broken Limestone Mining and Quarrying		500
212313	Crushed and Broken Granite Mining and Quarrying		500
212319	Other Crushed and Broken Stone Mining and Quarrying		500
212321	Construction Sand and Gravel Mining		500
212322	Industrial Sand Mining		500
212324	Kaolin and Ball Clay Mining		500
212325	Clay and Ceramic and Refractory Minerals Mining		500
212391	Potash, Soda, and Borate Mineral Mining		500
212392	Phosphate Rock Mining		500
212393	Other Chemical and Fertilizer Mineral Mining		500
212399	All Other Nonmetallic Mineral Mining		500
	Subsector 213—Support Activities for Mining		
213111	Drilling Oil and Gas Wells		500
213112	Support Activities for Oil and Gas Operations	$6.5	
213113	Support Activities for Coal Mining	$6.5	
213114	Support Activities for Metal Mining	$6.5	
213115	Support Activities for Nonmetallic Minerals (except Fuels)	$6.5	
	Sector 22—Utilities		
	Subsector 221—Utilities		
221111	Hydroelectric Power Generation	See footnote 1	
221112	Fossil Fuel Electric Power Generation	See footnote 1	
221113	Nuclear Electric Power Generation	See footnote 1	
221119	Other Electric Power Generation	See footnote 1	
221121	Electric Bulk Power Transmission and Control	See footnote 1	
221122	Electric Power Distribution	See footnote 1	
221210	Natural Gas Distribution		500
221310	Water Supply and Irrigation Systems	$6.5	
221320	Sewage Treatment Facilities	$6.5	
221330	Steam and Air-Conditioning Supply	$11.5	
	Sector 23—Construction		
	Subsector 236—Construction of Buildings		
236115	New Single-Family Housing Construction (except Operative Builders)	$31.0	
236116	New Multifamily Housing Construction (except Operative Builders)	$31.0	
236117	New Housing Operative Builders	$31.0	
236118	Residential Remodelers	$31.0	
236210	Industrial Building Construction	$31.0	
236220	Commercial and Institutional Building Construction	$31.0	
	Subsector 237—Heavy and Civil Engineering Construction		
237110	Water and Sewer Line and Related Structures Construction	$31.0	
237120	Oil and Gas Pipeline and Related Structures Construction	$31.0	
237130	Power and Communication Line and Related Structures Construction	$31.0	
237210	Land Subdivision	$6.5	
237310	Highway, Street, and Bridge Construction	$31.0	
237990	Other Heavy and Civil Engineering Construction	$31.0	
EXCEPT,	Dredging and Surface Cleanup Activities [2]	$18.5	
	Subsector 238—Specialty Trade Contractors		
238110	Poured Concrete Foundation and Structure Contractors	$13.0	
238120	Structural Steel and Precast Concrete Contractors	$13.0	
238130	Framing Contractors	$13.0	
238140	Masonry Contractors	$13.0	
238150	Glass and Glazing Contractors	$13.0	
238160	Roofing Contractors	$13.0	
238170	Siding Contractors	$13.0	
238190	Other Foundation, Structure, and Building Exterior Contractors	$13.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
238210	Electrical Contractors and other Wiring Installation Contractors	$13.0	
238220	Plumbing, Heating, and Air-Conditioning Contractors	$13.0	
238290	Other Building Equipment Contractors	$13.0	
238310	Drywall and Insulation Contractors	$13.0	
238320	Painting and Wall Covering Contractors	$13.0	
238330	Flooring Contractors	$13.0	
238340	Tile and Terrazzo Contractors	$13.0	
238350	Finish Carpentry Contractors	$13.0	
238390	Other Building Finishing Contractors	$13.0	
238910	Site Preparation Contractors	[15] $13.0	
238990	All Other Specialty Trade Contractors [15]	[15] $13.0	
238990	Building and Property Specialty Trade Services [15]	[15] $13.0	
EXCEPT,	Building and Property Specialty Trade Services [15]	[15] $12.0	
Sectors 31–33—Manufacturing			
Subsector 311—Food Manufacturing			
311111	Dog and Cat Food Manufacturing		500
311119	Other Animal Food Manufacturing		500
311211	Flour Milling		500
311212	Rice Milling		500
311213	Malt Manufacturing		750
311221	Wet Corn Milling		500
311222	Soybean Processing		1,000
311223	Other Oilseed Processing		1,000
311225	Fats and Oils Refining and Blending		1,000
311230	Breakfast Cereal Manufacturing		500
311311	Sugarcane Mills		750
311312	Cane Sugar Refining		750
311313	Beet Sugar Manufacturing		500
311320	Chocolate and Confectionery Manufacturing from Cacao Beans		500
311330	Confectionery Manufacturing from Purchased Chocolate		500
311340	Non-Chocolate Confectionery Manufacturing		500
311411	Frozen Fruit, Juice and Vegetable Manufacturing		500
311412	Frozen Specialty Food Manufacturing		[3] 500
311421	Fruit and Vegetable Canning [3]		1,000
311422	Specialty Canning		500
311423	Dried and Dehydrated Food Manufacturing		500
311511	Fluid Milk Manufacturing		500
311512	Creamery Butter Manufacturing		500
311513	Cheese Manufacturing		500
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing		500
311520	Ice Cream and Frozen Dessert Manufacturing		500
311611	Animal (except Poultry) Slaughtering		500
311612	Meat Processed from Carcasses		500
311613	Rendering and Meat By-product Processing		500
311615	Poultry Processing		500
311711	Seafood Canning		500
311712	Fresh and Frozen Seafood Processing		500
311811	Retail Bakeries		500
311812	Commercial Bakeries		500
311813	Frozen Cakes, Pies, and Other Pastries Manufacturing		750
311821	Cookie and Cracker Manufacturing		500
311822	Flour Mixes and Dough Manufacturing from Purchased Flour		500
311823	Dry Pasta Manufacturing		500
311830	Tortilla Manufacturing		500
311911	Roasted Nuts and Peanut Butter Manufacturing		500
311919	Other Snack Food Manufacturing		500
311920	Coffee and Tea Manufacturing		500
311930	Flavoring Syrup and Concentrate Manufacturing		500
311941	Mayonnaise, Dressing and Other Prepared Sauce Manufacturing		500
311942	Spice and Extract Manufacturing		500
311991	Perishable Prepared Food Manufacturing		500
311999	All Other Miscellaneous Food Manufacturing		500
Subsector 312—Beverage and Tobacco Product Manufacturing			
312111	Soft Drink Manufacturing		500
312112	Bottled Water Manufacturing		500
312113	Ice Manufacturing		500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
312120	Breweries		500
312130	Wineries		500
312140	Distilleries		750
312210	Tobacco Stemming and Redrying		500
312221	Cigarette Manufacturing		1,000
312229	Other Tobacco Product Manufacturing		500
	Subsector 313—Textile Mills		
313111	Yarn Spinning Mills		500
313112	Yarn Texturizing, Throwing and Twisting Mills		500
313113	Thread Mills		500
313210	Broadwoven Fabric Mills		1,000
313221	Narrow Fabric Mills		500
313222	Schiffli Machine Embroidery		500
313230	Nonwoven Fabric Mills		500
313241	Weft Knit Fabric Mills		500
313249	Other Knit Fabric and Lace Mills		500
313311	Broadwoven Fabric Finishing Mills		1,000
313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills		500
313320	Fabric Coating Mills		1,000
	Subsector 314—Textile Product Mills		
314110	Carpet and Rug Mills		500
314121	Curtain and Drapery Mills		500
314129	Other Household Textile Product Mills		500
314911	Textile Bag Mills		500
314912	Canvas and Related Product Mills		500
314991	Rope, Cordage and Twine Mills		500
314992	Tire Cord and Tire Fabric Mills		1,000
314999	All Other Miscellaneous Textile Product Mills		500
	Subsector 315—Apparel Manufacturing		
315111	Sheer Hosiery Mills		500
315119	Other Hosiery and Sock Mills		500
315191	Outerwear Knitting Mills		500
315192	Underwear and Nightwear Knitting Mills		500
315211	Men's and Boys' Cut and Sew Apparel Contractors		500
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors		500
315221	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing.		500
315222	Men's and Boys' Cut and Sew Suit, Coat and Overcoat Manufacturing.		500
315223	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing.		500
315224	Men's and Boys' Cut and Sew Trouser, Slack and Jean Manufacturing.		500
315225	Men's and Boys' Cut and Sew Work Clothing Manufacturing		500
315228	Men's and Boys' Cut and Sew Other Outerwear Manufacturing		500
315231	Women's and Girls' Cut and Sew Lingerie, Loungewear and Nightwear Manufacturing.		500
315232	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing		500
315233	Women's and Girls' Cut and Sew Dress Manufacturing		500
315234	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket and Skirt Manufacturing.		500
315239	Women's and Girls' Cut and Sew Other Outerwear Manufacturing		500
315291	Infants' Cut and Sew Apparel Manufacturing		500
315292	Fur and Leather Apparel Manufacturing		500
315299	All Other Cut and Sew Apparel Manufacturing		500
315991	Hat, Cap and Millinery Manufacturing		500
315992	Glove and Mitten Manufacturing		500
315993	Men's and Boys' Neckwear Manufacturing		500
315999	Other Apparel Accessories and Other Apparel Manufacturing		500
	Subsector 316—Leather and Allied Product Manufacturing		
316110	Leather and Hide Tanning and Finishing		500
316211	Rubber and Plastics Footwear Manufacturing		1,000
316212	House Slipper Manufacturing		500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
316213	Men's Footwear (except Athletic) Manufacturing		500
316214	Women's Footwear (except Athletic) Manufacturing		500
316219	Other Footwear Manufacturing		500
316991	Luggage Manufacturing		500
316992	Women's Handbag and Purse Manufacturing		500
316993	Personal Leather Good (except Women's Handbag and Purse) Manufacturing.		500
316999	All Other Leather Good and Allied Product Manufacturing		500
	Subsector 321—Wood Product Manufacturing		
321113	Sawmills		500
321114	Wood Preservation		500
321211	Hardwood Veneer and Plywood Manufacturing		500
321212	Softwood Veneer and Plywood Manufacturing		500
321213	Engineered Wood Member (except Truss) Manufacturing		500
321214	Truss Manufacturing		500
321219	Reconstituted Wood Product Manufacturing		500
321911	Wood Window and Door Manufacturing		500
321912	Cut Stock, Resawing Lumber, and Planing		500
321918	Other Millwork (including Flooring)		500
321920	Wood Container and Pallet Manufacturing		500
321991	Manufactured Home (Mobile Home) Manufacturing		500
321992	Prefabricated Wood Building Manufacturing		500
321999	All Other Miscellaneous Wood Product Manufacturing		500
	Subsector 322—Paper Manufacturing		
322110	Pulp Mills		750
322121	Paper (except Newsprint) Mills		750
322122	Newsprint Mills		750
322130	Paperboard Mills		750
322211	Corrugated and Solid Fiber Box Manufacturing		500
322212	Folding Paperboard Box Manufacturing		750
322213	Setup Paperboard Box Manufacturing		500
322214	Fiber Can, Tube, Drum, and Similar Products Manufacturing		500
322215	Non-Folding Sanitary Food Container Manufacturing		750
322221	Coated and Laminated Packaging Paper Manufacturing		500
322222	Coated and Laminated Paper Manufacturing		500
322223	Plastics, Foil, and Coated Paper Bag Manufacturing		500
322224	Uncoated Paper and Multiwall Bag Manufacturing		500
322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses		500
322226	Surface-Coated Paperboard Manufacturing		500
322231	Die-Cut Paper and Paperboard Office Supplies Manufacturing		500
322232	Envelope Manufacturing		500
322233	Stationery, Tablet, and Related Product Manufacturing		500
322291	Sanitary Paper Product Manufacturing		500
322299	All Other Converted Paper Product Manufacturing		500
	Subsector 323—Printing and Related Support Activities		
323110	Commercial Lithographic Printing		500
323111	Commercial Gravure Printing		500
323112	Commercial Flexographic Printing		500
323113	Commercial Screen Printing		500
323114	Quick Printing		500
323115	Digital Printing		500
323116	Manifold Business Forms Printing		500
323117	Books Printing		500
323118	Blankbook, Loose-leaf Binder and Device Manufacturing		500
323119	Other Commercial Printing		500
323121	Tradebinding and Related Work		500
323122	Prepress Services		500
	Subsector 324—Petroleum and Coal Products Manufacturing		
324110	Petroleum Refineries[4]		[4] 1,500
324121	Asphalt Paving Mixture and Block Manufacturing		500
324122	Asphalt Shingle and Coating Materials Manufacturing		750
324191	Petroleum Lubricating Oil and Grease Manufacturing		500
324199	All Other Petroleum and Coal Products Manufacturing		500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
Subsector 325—Chemical Manufacturing			
325110	Petrochemical Manufacturing		1,000
325120	Industrial Gas Manufacturing		1,000
325131	Inorganic Dye and Pigment Manufacturing		1,000
325132	Synthetic Organic Dye and Pigment Manufacturing		750
325181	Alkalies and Chlorine Manufacturing		1,000
325182	Carbon Black Manufacturing		500
325188	All Other Basic Inorganic Chemical Manufacturing		1,000
325191	Gum and Wood Chemical Manufacturing		500
325192	Cyclic Crude and Intermediate Manufacturing		750
325193	Ethyl Alcohol Manufacturing		1,000
325199	All Other Basic Organic Chemical Manufacturing		1,000
325211	Plastics Material and Resin Manufacturing		750
325212	Synthetic Rubber Manufacturing		1,000
325221	Cellulosic Organic Fiber Manufacturing		1,000
325222	Noncellulosic Organic Fiber Manufacturing		1,000
325311	Nitrogenous Fertilizer Manufacturing		1,000
325312	Phosphatic Fertilizer Manufacturing		500
325314	Fertilizer (Mixing Only) Manufacturing		500
325320	Pesticide and Other Agricultural Chemical Manufacturing		500
325411	Medicinal and Botanical Manufacturing		750
325412	Pharmaceutical Preparation Manufacturing		750
325413	In-Vitro Diagnostic Substance Manufacturing		500
325414	Biological Product (except Diagnostic) Manufacturing		500
325510	Paint and Coating Manufacturing		500
325520	Adhesive Manufacturing		500
325611	Soap and Other Detergent Manufacturing		750
325612	Polish and Other Sanitation Good Manufacturing		500
325613	Surface Active Agent Manufacturing		500
325620	Toilet Preparation Manufacturing		500
325910	Printing Ink Manufacturing		500
325920	Explosives Manufacturing		750
325991	Custom Compounding of Purchased Resins		500
325992	Photographic Film, Paper, Plate and Chemical Manufacturing		500
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.		500
Subsector 326—Plastics and Rubber Products Manufacturing			
326111	Plastics Bag and Pouch Manufacturing		500
326112	Unsupported Plastics Packaging Film and Sheet Manufacturing		500
326113	Unsupported Plastics Film and Sheet (except Packaging) Manufacturing.		500
326121	Unsupported Plastics Profile Shapes Manufacturing		500
326122	Plastics Pipe and Pipe Fitting Manufacturing		500
326130	Laminated Plastics Plate, Sheet and Shape Manufacturing		500
326140	Polystyrene Foam Product Manufacturing		500
326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing.		500
326160	Plastics Bottle Manufacturing		500
326191	Plastics Plumbing Fixture Manufacturing		750
326192	Resilient Floor Covering Manufacturing		500
326199	All Other Plastics Product Manufacturing		[5]1,000
326211	Tire Manufacturing (except Retreading)[5]		500
326212	Tire Retreading		500
326220	Rubber and Plastics Hoses and Belting Manufacturing		500
326291	Rubber Product Manufacturing for Mechanical Use		500
326299	All Other Rubber Product Manufacturing		500
Subsector 327—Nonmetallic Mineral Product Manufacturing			
327111	Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing.		750
327112	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing.		500
327113	Porcelain Electrical Supply Manufacturing		500
327121	Brick and Structural Clay Tile Manufacturing		500
327122	Ceramic Wall and Floor Tile Manufacturing		500
327123	Other Structural Clay Product Manufacturing		500
327124	Clay Refractory Manufacturing		500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
327125	Nonclay Refractory Manufacturing		750
327211	Flat Glass Manufacturing		1,000
327212	Other Pressed and Blown Glass and Glassware Manufacturing		750
327213	Glass Container Manufacturing		750
327215	Glass Product Manufacturing Made of Purchased Glass		500
327310	Cement Manufacturing		750
327320	Ready-Mix Concrete Manufacturing		500
327331	Concrete Block and Brick Manufacturing		500
327332	Concrete Pipe Manufacturing		500
327390	Other Concrete Product Manufacturing		500
327410	Lime Manufacturing		1,000
327420	Gypsum Product Manufacturing		500
327910	Abrasive Product Manufacturing		500
327991	Cut Stone and Stone Product Manufacturing		500
327992	Ground or Treated Mineral and Earth Manufacturing		750
327993	Mineral Wool Manufacturing		500
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing		
	Subsector 331—Primary Metal Manufacturing		
331111	Iron and Steel Mills		1,000
331112	Electrometallurgical Ferroalloy Product Manufacturing		750
331210	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel		1,000
331221	Cold-Rolled Steel Shape Manufacturing		1,000
331222	Steel Wire Drawing		1,000
331311	Alumina Refining		1,000
331312	Primary Aluminum Production		750
331314	Secondary Smelting and Alloying of Aluminum		750
331315	Aluminum Sheet, Plate and Foil Manufacturing		750
331316	Aluminum Extruded Product Manufacturing		750
331319	Other Aluminum Rolling and Drawing		750
331411	Primary Smelting and Refining of Copper		1,000
331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum).		750
331421	Copper Rolling, Drawing and Extruding		750
331422	Copper Wire (except Mechanical) Drawing		1,000
331423	Secondary Smelting, Refining, and Alloying of Copper		750
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing and Extruding.		750
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).		750
331511	Iron Foundries		500
331512	Steel Investment Foundries		500
331513	Steel Foundries (except Investment)		500
331521	Aluminum Die-Casting Foundries		500
331522	Nonferrous (except Aluminum) Die-Casting Foundries		500
331524	Aluminum Foundries (except Die-Casting)		500
331525	Copper Foundries (except Die-Casting)		500
331528	Other Nonferrous Foundries (except Die-Casting)		500
	Subsector 332—Fabricated Metal Product Manufacturing		
332111	Iron and Steel Forging		500
332112	Nonferrous Forging		500
332114	Custom Roll Forming		500
332115	Crown and Closure Manufacturing		500
332116	Metal Stamping		500
332117	Powder Metallurgy Part Manufacturing		500
332211	Cutlery and Flatware (except Precious) Manufacturing		500
332212	Hand and Edge Tool Manufacturing		500
332213	Saw Blade and Handsaw Manufacturing		500
332214	Kitchen Utensil, Pot and Pan Manufacturing		500
332311	Prefabricated Metal Building and Component Manufacturing		500
332312	Fabricated Structural Metal Manufacturing		500
332313	Plate Work Manufacturing		500
332321	Metal Window and Door Manufacturing		500
332322	Sheet Metal Work Manufacturing		500
332323	Ornamental and Architectural Metal Work Manufacturing		500
332410	Power Boiler and Heat Exchanger Manufacturing		500
332420	Metal Tank (Heavy Gauge) Manufacturing		1,000
332431	Metal Can Manufacturing		

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
332439	Other Metal Container Manufacturing		500
332510	Hardware Manufacturing		500
332611	Spring (Heavy Gauge) Manufacturing		500
332612	Spring (Light Gauge) Manufacturing		500
332618	Other Fabricated Wire Product Manufacturing		500
332710	Machine Shops		500
332721	Precision Turned Product Manufacturing		500
332722	Bolt, Nut, Screw, Rivet and Washer Manufacturing		750
332811	Metal Heat Treating		500
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.		500
332813	Electroplating, Plating, Polishing, Anodizing and Coloring		500
332911	Industrial Valve Manufacturing		500
332912	Fluid Power Valve and Hose Fitting Manufacturing		500
332913	Plumbing Fixture Fitting and Trim Manufacturing		500
332919	Other Metal Valve and Pipe Fitting Manufacturing		750
332991	Ball and Roller Bearing Manufacturing		1,000
332992	Small Arms Ammunition Manufacturing		1,500
332993	Ammunition (except Small Arms) Manufacturing		1,000
332994	Small Arms Manufacturing		500
332995	Other Ordnance and Accessories Manufacturing		500
332996	Fabricated Pipe and Pipe Fitting Manufacturing		500
332997	Industrial Pattern Manufacturing		750
332998	Enameled Iron and Metal Sanitary Ware Manufacturing		500
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing		
	Subsector 333—Machinery Manufacturing[6]		
333111	Farm Machinery and Equipment Manufacturing		500
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.		500
333120	Construction Machinery Manufacturing		750
333131	Mining Machinery and Equipment Manufacturing		500
333132	Oil and Gas Field Machinery and Equipment Manufacturing		500
333210	Sawmill and Woodworking Machinery Manufacturing		500
333220	Plastics and Rubber Industry Machinery Manufacturing		500
333291	Paper Industry Machinery Manufacturing		500
333292	Textile Machinery Manufacturing		500
333293	Printing Machinery and Equipment Manufacturing		500
333294	Food Product Machinery Manufacturing		500
333295	Semiconductor Machinery Manufacturing		500
333298	All Other Industrial Machinery Manufacturing		500
333311	Automatic Vending Machine Manufacturing		500
333312	Commercial Laundry, Drycleaning and Pressing Machine Manufacturing.		1,000
333313	Office Machinery Manufacturing		500
333314	Optical Instrument and Lens Manufacturing		500
333315	Photographic and Photocopying Equipment Manufacturing		500
333319	Other Commercial and Service Industry Machinery Manufacturing		500
333411	Air Purification Equipment Manufacturing		500
333412	Industrial and Commercial Fan and Blower Manufacturing		500
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing		750
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.		500
333511	Industrial Mold Manufacturing		500
333512	Machine Tool (Metal Cutting Types) Manufacturing		500
333513	Machine Tool (Metal Forming Types) Manufacturing		500
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing		500
333515	Cutting Tool and Machine Tool Accessory Manufacturing		500
333516	Rolling Mill Machinery and Equipment Manufacturing		500
333518	Other Metalworking Machinery Manufacturing		1,000
333611	Turbine and Turbine Generator Set Unit Manufacturing		500
333612	Speed Changer, Industrial High- Speed Drive and Gear Manufacturing.		500
333613	Mechanical Power Transmission Equipment Manufacturing		1,000
333618	Other Engine Equipment Manufacturing		500
333911	Pump and Pumping Equipment Manufacturing		500
333912	Air and Gas Compressor Manufacturing		500
333913	Measuring and Dispensing Pump Manufacturing		500
333921	Elevator and Moving Stairway Manufacturing		

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
333922	Conveyor and Conveying Equipment Manufacturing		500
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing.		500
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing.		750
333991	Power-Driven Hand Tool Manufacturing		500
333992	Welding and Soldering Equipment Manufacturing		500
333993	Packaging Machinery Manufacturing		500
333994	Industrial Process Furnace and Oven Manufacturing		500
333995	Fluid Power Cylinder and Actuator Manufacturing		500
333996	Fluid Power Pump and Motor Manufacturing		500
333997	Scale and Balance Manufacturing		500
333999	All Other Miscellaneous General Purpose Machinery Manufacturing		500
	Subsector 334—Computer and Electronic Product Manufacturing[6]		
334111	Electronic Computer Manufacturing		1,000
334112	Computer Storage Device Manufacturing		1,000
334113	Computer Terminal Manufacturing		1,000
334119	Other Computer Peripheral Equipment Manufacturing		1,000
334210	Telephone Apparatus Manufacturing		1,000
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.		750
334290	Other Communications Equipment Manufacturing		750
334310	Audio and Video Equipment Manufacturing		750
334411	Electron Tube Manufacturing		750
334412	Bare Printed Circuit Board Manufacturing		500
334413	Semiconductor and Related Device Manufacturing		500
334414	Electronic Capacitor Manufacturing		500
334415	Electronic Resistor Manufacturing		500
334416	Electronic Coil, Transformer, and Other Inductor Manufacturing		500
334417	Electronic Connector Manufacturing		500
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing		500
334419	Other Electronic Component Manufacturing		500
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing		750
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.		500
334512	Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use.		500
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.		500
334514	Totalizing Fluid Meter and Counting Device Manufacturing		500
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals.		500
334516	Analytical Laboratory Instrument Manufacturing		500
334517	Irradiation Apparatus Manufacturing		500
334518	Watch, Clock, and Part Manufacturing		500
334519	Other Measuring and Controlling Device Manufacturing		500
334611	Software Reproducing		750
334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing.		1,000
334613	Magnetic and Optical Recording Media Manufacturing		1,000
	Subsector 335—Electrical Equipment, Appliance and Component Manufacturing[6]		
335110	Electric Lamp Bulb and Part Manufacturing		500
335121	Residential Electric Lighting Fixture Manufacturing		500
335122	Commercial, Industrial and Institutional Electric Lighting Fixture Manufacturing.		500
335129	Other Lighting Equipment Manufacturing		750
335211	Electric Housewares and Household Fan Manufacturing		750
335212	Household Vacuum Cleaner Manufacturing		750
335221	Household Cooking Appliance Manufacturing		1,000
335222	Household Refrigerator and Home Freezer Manufacturing		1,000
335224	Household Laundry Equipment Manufacturing		500
335228	Other Major Household Appliance Manufacturing		750
335311	Power, Distribution and Specialty Transformer Manufacturing		1,000
335312	Motor and Generator Manufacturing		750
335313	Switchgear and Switchboard Apparatus Manufacturing		750
335314	Relay and Industrial Control Manufacturing		500
335911	Storage Battery Manufacturing		

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
335912	Primary Battery Manufacturing		1,000
335921	Fiber Optic Cable Manufacturing		1,000
335929	Other Communication and Energy Wire Manufacturing		1,000
335931	Current-Carrying Wiring Device Manufacturing		500
335932	Noncurrent-Carrying Wiring Device Manufacturing		500
335991	Carbon and Graphite Product Manufacturing		750
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing.		500
	Subsector 336—Transportation Equipment Manufacturing[8]		
336111	Automobile Manufacturing		1,000
336112	Light Truck and Utility Vehicle Manufacturing		1,000
336120	Heavy Duty Truck Manufacturing		1,000
336211	Motor Vehicle Body Manufacturing		1,000
336212	Truck Trailer Manufacturing		500
336213	Motor Home Manufacturing		1,000
336214	Travel Trailer and Camper Manufacturing		500
336311	Carburetor, Piston, Piston Ring and Valve Manufacturing		500
336312	Gasoline Engine and Engine Parts Manufacturing		750
336321	Vehicular Lighting Equipment Manufacturing		500
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing.		750
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing.		750
336340	Motor Vehicle Brake System Manufacturing		750
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing		750
336360	Motor Vehicle Seating and Interior Trim Manufacturing		500
336370	Motor Vehicle Metal Stamping		500
336391	Motor Vehicle Air-Conditioning Manufacturing		750
336399	All Other Motor Vehicle Parts Manufacturing		750
336411	Aircraft Manufacturing		1,500
336412	Aircraft Engine and Engine Parts Manufacturing		1,000
336413	Other Aircraft Part and Auxiliary Equipment Manufacturing[7]		[7]1,000
336414	Guided Missile and Space Vehicle Manufacturing		1,000
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing.		1,000
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.		1,000
336510	Railroad Rolling Stock Manufacturing		1,000
336611	Ship Building and Repairing		500
336612	Boat Building		500
336991	Motorcycle, Bicycle and Parts Manufacturing		1,000
336992	Military Armored Vehicle, Tank and Tank Component Manufacturing		500
336999	All Other Transportation Equipment Manufacturing		
	Subsector 337—Furniture and Related Product Manufacturing		
337110	Wood Kitchen Cabinet and Counter Top Manufacturing		500
337121	Upholstered Household Furniture Manufacturing		500
337122	Nonupholstered Wood Household Furniture Manufacturing		500
337124	Metal Household Furniture Manufacturing		500
337125	Household Furniture (except Wood and Metal) Manufacturing		500
337127	Institutional Furniture Manufacturing		500
337129	Wood Television, Radio, and Sewing Machine Cabinet Manufacturing.		500
337211	Wood Office Furniture Manufacturing		500
337212	Custom Architectural Woodwork and Millwork Manufacturing		500
337214	Office Furniture (Except Wood) Manufacturing		500
337215	Showcase, Partition, Shelving, and Locker Manufacturing		500
337910	Mattress Manufacturing		500
337920	Blind and Shade Manufacturing		500
	Subsector 339—Miscellaneous Manufacturing		
339112	Surgical and Medical Instrument Manufacturing		500
339113	Surgical Appliance and Supplies Manufacturing		500
339114	Dental Equipment and Supplies Manufacturing		500
339115	Ophthalmic Goods Manufacturing		500
339116	Dental Laboratories		500
339911	Jewelry (except Costume) Manufacturing		500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
339912	Silverware and Holloware Manufacturing		500
339913	Jewelers' Material and Lapidary Work Manufacturing		500
339914	Costume Jewelry and Novelty Manufacturing		500
339920	Sporting and Athletic Goods Manufacturing		500
339931	Doll and Stuffed Toy Manufacturing		500
339932	Game, Toy, and Children's Vehicle Manufacturing		500
339941	Pen and Mechanical Pencil Manufacturing		500
339942	Lead Pencil and Art Good Manufacturing		500
339943	Marking Device Manufacturing		500
339944	Carbon Paper and Inked Ribbon Manufacturing		500
339950	Sign Manufacturing		500
339991	Gasket, Packing, and Sealing Device Manufacturing		500
339992	Musical Instrument Manufacturing		500
339993	Fastener, Button, Needle and Pin Manufacturing		500
339994	Broom, Brush and Mop Manufacturing		500
339995	Burial Casket Manufacturing		500
339999	All Other Miscellaneous Manufacturing		500

Sector 42—Wholesale Trade

(Not applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)

Subsector 423—Merchant Wholesalers, Durable Goods

423110	Automobile and Other Motor Vehicle Merchant Wholesalers		100
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers		100
423130	Tire and Tube Merchant Wholesalers		100
423140	Motor Vehicle Parts (Used) Merchant Wholesalers		100
423210	Furniture Merchant Wholesalers		100
423220	Home Furnishing Merchant Wholesalers		100
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers		100
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers.		100
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers		100
423390	Other Construction Material Merchant Wholesalers		100
423410	Photographic Equipment and Supplies Merchant Wholesalers		100
423420	Office Equipment Merchant Wholesalers		100
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers.		100
423440	Other Commercial Equipment Merchant Wholesalers		100
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers.		100
423460	Ophthalmic Goods Merchant Wholesalers		100
423490	Other Professional Equipment and Supplies Merchant Wholesalers		100
423510	Metal Service Centers and Other Metal Merchant Wholesalers		100
423520	Coal and Other Mineral and Ore Merchant Wholesalers		100
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers.		100
423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers.		100
423690	Other Electronic Parts and Equipment Merchant Wholesalers		100
423710	Hardware Merchant Wholesalers		100
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.		100
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.		100
423740	Refrigeration Equipment and Supplies Merchant Wholesalers		100
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers.		100
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers		100
423830	Industrial Machinery and Equipment Merchant Wholesalers		100
423840	Industrial Supplies Merchant Wholesalers		100
423850	Service Establishment Equipment and Supplies Merchant Wholesalers.		100
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.		100
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers.		100
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers		100
423930	Recyclable Material Merchant Wholesalers		100

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.		100
423990	Other Miscellaneous Durable Goods Merchant Wholesalers		100
	Subsector 424—Merchant Wholesalers, Nondurable Goods		
424110	Printing and Writing Paper Merchant Wholesalers		100
424120	Stationary and Office Supplies Merchant Wholesalers		100
424130	Industrial and Personal Service Paper Merchant Wholesalers		100
424210	Drugs and Druggists' Sundries Merchant Wholesalers		100
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers		100
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers		100
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.		100
424340	Footwear Merchant Wholesalers		100
424410	General Line Grocery Merchant Wholesalers		100
424420	Packaged Frozen Food Merchant Wholesalers		100
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers		100
424440	Poultry and Poultry Product Merchant Wholesalers		100
424450	Confectionery Merchant Wholesalers		100
424460	Fish and Seafood Merchant Wholesalers		100
424470	Meat and Meat Product Merchant Wholesalers		100
424480	Fresh Fruit and Vegetable Merchant Wholesalers		100
424490	Other Grocery and Related Products Merchant Wholesalers		100
424510	Grain and Field Bean Merchant Wholesalers		100
424520	Livestock Merchant Wholesalers		100
424590	Other Farm Product Raw Material Merchant Wholesalers		100
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers.		100
424690	Other Chemical and Allied Products Merchant Wholesalers		100
424710	Petroleum Bulk Stations and Terminals		100
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).		100
424810	Beer and Ale Merchant Wholesalers		100
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers		100
424910	Farm Supplies Merchant Wholesalers		100
424920	Book, Periodical, and Newspaper Merchant Wholesalers		100
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers		100
424940	Tobacco and Tobacco Product Merchant Wholesalers		100
424950	Paint, Varnish, and Supplies Merchant Wholesalers		100
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers		100
	Subsector 425—Wholesale Electronic Markets and Agents and Brokers		
425110	Business to Business Electronic Markets		100
425120	Wholesale Trade Agents and Brokers		100
	Sectors 44–45—Retail Trade		
	(Not applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)		
	Subsector 441—Motor Vehicle and Parts Dealers		
441110	New Car Dealers	$26.5	
441120	Used Car Dealers	$21.0	
441210	Recreational Vehicle Dealers	$8.5	
441221	Motorcycle, ATV, and Personal Watercraft Dealers	$6.5	
441222	Boat Dealers	$8.5	
441229	All Other Motor Vehicle Dealers	$8.5	
Except,		$9.0	
441310	Aircraft Dealers, Retail	$6.5	
441320	Automotive Parts and Accessories Stores	$6.5	
	Tire Dealers	$6.5	
	Subsector 442—Furniture and Home Furnishings Stores		
442110	Furniture Stores	$8.5	
442210	Floor Covering Stores	$8.5	
442291	Window Treatment Stores	$8.5	
442299	All Other Home Furnishings Stores	$8.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Subsector 443—Electronics and Appliance Stores		
443111	Household Appliance Stores	$8.0	
443112	Radio, Television and Other Electronics Stores	$8.0	
443120	Computer and Software Stores	$8.0	
443130	Camera and Photographic Supplies Stores	$6.5	
	Subsector 444—Building Material and Garden Equipment and Supplies Dealers		
444110	Home Centers	$6.5	
444120	Paint and Wallpaper Stores	$6.5	
444130	Hardware Stores	$6.5	
444190	Other Building Material Dealers	$6.5	
444210	Outdoor Power Equipment Stores	$6.5	
444220	Nursery and Garden Centers	$6.5	
	Subsector 445—Food and Beverage Stores		
445110	Supermarkets and Other Grocery (except Convenience) Stores	$25.0	
445120	Convenience Stores	$25.0	
445210	Meat Markets	$6.5	
445220	Fish and Seafood Markets	$6.5	
445230	Fruit and Vegetable Markets	$6.5	
445291	Baked Goods Stores	$6.5	
445292	Confectionery and Nut Stores	$6.5	
445299	All Other Specialty Food Stores	$6.5	
445310	Beer, Wine and Liquor Stores	$6.5	
	Subsector 446—Health and Personal Care Stores		
446110	Pharmacies and Drug Stores	$6.5	
446120	Cosmetics, Beauty Supplies and Perfume Stores	$6.5	
446130	Optical Goods Stores	$6.5	
446191	Food (Health) Supplement Stores	$6.5	
446199	All Other Health and Personal Care Stores	$6.5	
	Subsector 447—Gasoline Stations		
447110	Gasoline Stations with Convenience Stores	$25.0	
447190	Other Gasoline Stations	$8.0	
	Subsector 448—Clothing and Clothing Accessories Stores		
448110	Men's Clothing Stores	$8.0	
448120	Women's Clothing Stores	$8.0	
448130	Children's and Infants' Clothing Stores	$6.5	
448140	Family Clothing Stores	$8.0	
448150	Clothing Accessories Stores	$6.5	
448190	Other Clothing Stores	$6.5	
448210	Shoe Stores	$8.0	
448310	Jewelry Stores	$8.5	
448320	Luggage and Leather Goods Stores	$6.5	
	Subsector 451—Sporting Good, Hobby, Book and Music Stores		
451110	Sporting Goods Stores	$6.5	
451120	Hobby, Toy and Game Stores	$6.5	
451130	Sewing, Needlework and Piece Goods Stores	$6.5	
451140	Musical Instrument and Supplies Stores	$6.5	
451211	Book Stores	$6.5	
451212	News Dealers and Newsstands	$6.5	
451220	Prerecorded Tape, Compact Disc and Record Stores	$6.5	
	Subsector 452—General Merchandise Stores		
452111	Department Stores (except Discount Department Stores)	$25.0	
452112	Discount Department Stores	$25.0	
452910	Warehouse Clubs and Superstores	$25.0	
452990	All Other General Merchandise Stores	$10.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
	Subsector 453—Miscellaneous Store Retailers		
453110	Florists	$6.5	
453210	Office Supplies and Stationery Stores	$6.5	
453220	Gift, Novelty and Souvenir Stores	$6.5	
453310	Used Merchandise Stores	$6.5	
453910	Pet and Pet Supplies Stores	$6.5	
453920	Art Dealers	$6.5	
453930	Manufactured (Mobile) Home Dealers	$12.0	
453991	Tobacco Stores	$6.5	
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	$6.5	
	Subsector 454—Nonstore Retailers		
454111	Electronic Shopping	$23.0	
454112	Electronic Auctions	$23.0	
454113	Mail-Order Houses	$23.0	
454210	Vending Machine Operators	$6.5	
454311	Heating Oil Dealers	$11.5	
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	$6.5	
454319	Other Fuel Dealers	$6.5	
454390	Other Direct Selling Establishments	$6.5	
	Sectors 48–49—Transportation and Warehousing		
	Subsector 481—Air Transportation		
481111	Scheduled Passenger Air Transportation		1,500
481112	Scheduled Freight Air Transportation		1,500
481211	Nonscheduled Chartered Passenger Air Transportation		1,500
Except,	Offshore Marine Air Transportation Services	$25.5	
481212	Nonscheduled Chartered Freight Air Transportation		1,500
Except,	Offshore Marine Air Transportation Services	$25.5	
481219	Other Nonscheduled Air Transportation	$6.5	
	Subsector 482—Rail Transportation		
482111	Line-Haul Railroads		1,500
482112	Short Line Railroads		500
	Subsector 483—Water Transportation[15]		
483111	Deep Sea Freight Transportation		500
483112	Deep Sea Passenger Transportation		500
483113	Coastal and Great Lakes Freight Transportation		500
483114	Coastal and Great Lakes Passenger Transportation		500
483211	Inland Water Freight Transportation		500
483212	Inland Water Passenger Transportation		500
	Subsector 484—Truck Transportation		
484110	General Freight Trucking, Local	$23.5	
484121	General Freight Trucking, Long-Distance, Truckload	$23.5	
484122	General Freight Trucking, Long-Distance, Less Than Truckload	$23.5	
484210	Used Household and Office Goods Moving	$23.5	
484220	Specialized Freight (except Used Goods) Trucking, Local	$23.5	
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	$23.5	
	Subsector 485—Transit and Ground Passenger Transportation		
485111	Mixed Mode Transit Systems	$6.5	
485112	Commuter Rail Systems	$6.5	
485113	Bus and Motor Vehicle Transit Systems	$6.5	
485119	Other Urban Transit Systems	$6.5	
485210	Interurban and Rural Bus Transportation	$6.5	
485310	Taxi Service	$6.5	
485320	Limousine Service	$6.5	
485410	School and Employee Bus Transportation	$6.5	
485510	Charter Bus Industry	$6.5	
485991	Special Needs Transportation	$6.5	
485999	All Other Transit and Ground Passenger Transportation	$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Subsector 486—Pipeline Transportation		
486110	Pipeline Transportation of Crude Oil		1,500
486210	Pipeline Transportation of Natural Gas	$6.5	
486910	Pipeline Transportation of Refined Petroleum Products		1,500
486990	All Other Pipeline Transportation	$31.5	
	Subsector 487—Scenic and Sightseeing Transportation		
487110	Scenic and Sightseeing Transportation, Land	$6.5	
487210	Scenic and Sightseeing Transportation, Water	$6.5	
487990	Scenic and Sightseeing Transportation, Other	$6.5	
	Subsector 488—Support Activities for Transportation		
488111	Air Traffic Control	$6.5	
488119	Other Airport Operations	$6.5	
488190	Other Support Activities for Air Transportation	$6.5	
488210	Support Activities for Rail Transportation	$6.5	
488310	Port and Harbor Operations	$23.5	
488320	Marine Cargo Handling	$23.5	
488330	Navigational Services to Shipping	$6.5	
488390	Other Support Activities for Water Transportation	$6.5	
488410	Motor Vehicle Towing	$6.5	
488490	Other Support Activities for Road Transportation	$6.5	
488510	Freight Transportation Arrangement[10]	[10]$6.5	
Except,	Non-Vessel Owning Common Carriers and Household Goods Forwarders.	$23.5	
488991	Packing and Crating	$23.5	
488999	All Other Support Activities for Transportation	$6.5	
	Subsector 491—Postal Service		
491110	Postal Service	$6.5	
	Subsector 492—Couriers and Messengers		
492110	Couriers and Express Delivery Services		1,500
492210	Local Messengers and Local Delivery	$23.5	
	Subsector 493—Warehousing and Storage		
493110	General Warehousing and Storage	$23.5	
493120	Refrigerated Warehousing and Storage	$23.5	
493130	Farm Product Warehousing and Storage	$23.5	
493190	Other Warehousing and Storage	$23.5	
	Sector 51—Information		
	Subsector 511—Publishing Industries (except Internet)		
511110	Newspaper Publishers		500
511120	Periodical Publishers		500
511130	Book Publishers		500
511140	Directory and Mailing List Publishers		500
511191	Greeting Card Publishers		500
511199	All Other Publishers		500
511210	Software Publishers	$23.0	
	Subsector 512—Motion Picture and Sound Recording Industries		
512110	Motion Picture and Video Production	$27.0	
512120	Motion Picture and Video Distribution	$27.0	
512131	Motion Picture Theaters (except Drive-Ins)	$6.5	
512132	Drive-In Motion Picture Theaters	$6.5	
512191	Teleproduction and Other Postproduction Services	$27.0	
512199	Other Motion Picture and Video Industries	$6.5	
512210	Record Production	$6.5	
512220	Integrated Record Production/Distribution		750
512230	Music Publishers		500
512240	Sound Recording Studios	$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
512290	Other Sound Recording Industries	$6.5	
	Subsector 515—Broadcasting (except Internet)		
515111	Radio Networks	$6.5	
515112	Radio Stations	$6.5	
515120	Television Broadcasting	$13.0	
515210	Cable and Other Subscription Programming	$13.5	
	Subsector 517—Telecommunications		
517110	Wired Telecommunications Carriers		1,500
517210	Wireless Telecommunications Carriers (except Satellite)		1,500
517410	Satellite Telecommunications	$13.5	
517911	Telecommunications Resellers		1,500
517919	All Other Telecommunications	$23.5	
	Subsector 518—Data Processing, Hosting, and Related Services		
518210	Data Processing, Hosting, and Related Services	$23.0	
	Subsector 519—Other Information Services		
519110	News Syndicates	$6.5	
519120	Libraries and Archives	$6.5	
519130	Internet Publishing and Broadcasting and Web Search Portals		500
519190	All Other Information Services	$6.5	
	Sector 52—Finance and Insurance		
	Subsector 522—Credit Intermediation and Related Activities		
522110	Commercial Banking[8]	[8]$165 million in assets	
522120	Savings Institutions[8]	[8]$165 million in assets	
522130	Credit Unions[8]	[8]$165 million in assets	
522190	Other Depository Credit Intermediation[8]	[8]$165 million in assets	
522210	Credit Card Issuing[8]	[8]$165 million in assets	
522220	Sales Financing	$6.5	
522291	Consumer Lending	$6.5	
522292	Real Estate Credit	$6.5	
522293	International Trade Financing[8]	[8]$165 million in assets	
522294	Secondary Market Financing	$6.5	
522298	All Other Non-Depository Credit Intermediation	$6.5	
522310	Mortgage and Nonmortgage Loan Brokers	$6.5	
522320	Financial Transactions Processing, Reserve, and Clearing House Activities.	$6.5	
522390	Other Activities Related to Credit Intermediation	$6.5	
	Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities		
523110	Investment Banking and Securities Dealing	$6.5	
523120	Securities Brokerage	$6.5	
523130	Commodity Contracts Dealing	$6.5	
523140	Commodity Contracts Brokerage	$6.5	
523210	Securities and Commodity Exchanges	$6.5	
523910	Miscellaneous Intermediation	$6.5	
523920	Portfolio Management	$6.5	
523930	Investment Advice	$6.5	
523991	Trust, Fiduciary and Custody Activities	$6.5	
523999	Miscellaneous Financial Investment Activities	$6.5	
	Subsector 524—Insurance Carriers and Related Activities		
524113	Direct Life Insurance Carriers	$6.5	
524114	Direct Health and Medical Insurance Carriers	$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
524126	Direct Property and Casualty Insurance Carriers		1,500
524127	Direct Title Insurance Carriers	$6.5	
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$6.5	
524130	Reinsurance Carriers	$6.5	
524210	Insurance Agencies and Brokerages	$6.5	
524291	Claims Adjusting	$6.5	
524292	Third Party Administration of Insurance and Pension Funds	$6.5	
524298	All Other Insurance Related Activities	$6.5	
	Subsector 525—Funds, Trusts and Other Financial Vehicles		
525110	Pension Funds	$6.5	
525120	Health and Welfare Funds	$6.5	
525190	Other Insurance Funds	$6.5	
525910	Open-End Investment Funds	$6.5	
525920	Trusts, Estates, and Agency Accounts	$6.5	
525930	Real Estate Investment Trusts	$6.5	
525990	Other Financial Vehicles	$6.5	
	Sector 53—Real Estate and Rental and Leasing		
	Subsector 531—Real Estate		
531110	Lessors of Residential Buildings and Dwellings	$6.5	
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	$6.5	
531130	Lessors of Miniwarehouses and Self Storage Units	$23.5	
531190	Lessors of Other Real Estate Property	$6.5	
Except,	Leasing of Building Space to Federal Government by Owners [9]	[9] $19.0	
531210	Offices of Real Estate Agents and Brokers [10]	[10] $2.0	
531311	Residential Property Managers	$2.0	
531312	Nonresidential Property Managers	$2.0	
531320	Offices of Real Estate Appraisers	$2.0	
531390	Other Activities Related to Real Estate	$2.0	
	Subsector 532—Rental and Leasing Services		
532111	Passenger Car Rental	$23.5	
532112	Passenger Car Leasing	$23.5	
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing.	$23.5	
532210	Consumer Electronics and Appliances Rental	$6.5	
532220	Formal Wear and Costume Rental	$6.5	
532230	Video Tape and Disc Rental	$6.5	
532291	Home Health Equipment Rental	$6.5	
532292	Recreational Goods Rental	$6.5	
532299	All Other Consumer Goods Rental	$6.5	
532310	General Rental Centers	$6.5	
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing.	$6.5	
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing.	$23.0	
532420	Office Machinery and Equipment Rental and Leasing	$6.5	
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing.		
	Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)		
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).	$6.5	
	Sector 54—Professional, Scientific and Technical Services		
	Subsector 541—Professional, Scientific and Technical Services		
541110	Offices of Lawyers	$6.5	
541191	Title Abstract and Settlement Offices	$6.5	
541199	All Other Legal Services	$6.5	
541211	Offices of Certified Public Accountants	$7.5	
541213	Tax Preparation Services	$6.5	
541214	Payroll Services	$7.5	
541219	Other Accounting Services	$7.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
541310	Architectural Services	$4.5	
541320	Landscape Architectural Services	$6.5	
541330	Engineering Services	$4.5	
Except,	Military and Aerospace Equipment and Military Weapons	$25.0	
Except,	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	$25.0	
Except,	Marine Engineering and Naval Architecture	$17.0	
541340	Drafting Services	$6.5	
Except,	Map Drafting	$4.5	
541350	Building Inspection Services	$6.5	
541360	Geophysical Surveying and Mapping Services	$4.5	
541370	Surveying and Mapping (except Geophysical) Services	$4.5	
541380	Testing Laboratories	$11.0	
541410	Interior Design Services	$6.5	
541420	Industrial Design Services	$6.5	
541430	Graphic Design Services	$6.5	
541490	Other Specialized Design Services	$6.5	
541511	Custom Computer Programming Services	$23.0	
541512	Computer Systems Design Services	$23.0	
541513	Computer Facilities Management Services	$23.0	
541519	Other Computer Related Services	$23.0	
Except,	Information Technology Value Added Resellers [18]		[18] 150
541611	Administrative Management and General Management Consulting Services.	$6.5	
541612	Human Resources Consulting Services	$6.5	
541613	Marketing Consulting Services	$6.5	
541614	Process, Physical Distribution and Logistics Consulting Services	$6.5	
541618	Other Management Consulting Services	$6.5	
541620	Environmental Consulting Services	$6.5	
541690	Other Scientific and Technical Consulting Services	$6.5	
541711	Research and Development in Biotechnology.[11]		[11] 500
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).[11]		[11] 500
Except,	Aircraft		1,500
Except,	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts		1,000
Except,	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.		1,000
EXCEPT,	Aircraft		1,500
EXCEPT,	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts		1,000
EXCEPT,	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.		1,000
541720	Research and Development in the Social Sciences and Humanities	$6.5	
541810	Advertising Agencies [10]	[10] $6.5	
541820	Public Relations Agencies	$6.5	
541830	Media Buying Agencies	$6.5	
541840	Media Representatives	$6.5	
541850	Display Advertising	$6.5	
541860	Direct Mail Advertising	$6.5	
541870	Advertising Material Distribution Services	$6.5	
541880	Other Services Related to Advertising	$6.5	
541910	Marketing Research and Public Opinion Polling	$6.5	
541921	Photography Studios, Portrait	$6.5	
541922	Commercial Photography	$6.5	
541930	Translation and Interpretation Services	$6.5	
541940	Veterinary Services	$6.5	
541990	All Other Professional, Scientific and Technical Services	$6.5	
Sector 55—Management of Companies and Enterprises			
Subsector 551—Management of Companies and Enterprises			
551111	Offices of Bank Holding Companies	$6.5	
551112	Offices of Other Holding Companies	$6.5	
Sector 56—Administrative and Support, Waste Management and Remediation Services			
Subsector 561—Administrative and Support Services			
561110	Office Administrative Services	$6.5	
561210	Facilities Support Services [12]	[12] $32.5	
561311	Employment Placement Agencies	$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
561312	Executive Search Services	$6.5	
561320	Temporary Help Services	$12.5	
561330	Employee Leasing Services	$12.5	
561410	Document Preparation Services	$6.5	
561421	Telephone Answering Services	$6.5	
561422	Telemarketing Bureaus and Other Contact Centers	$6.5	
561431	Private Mail Centers	$6.5	
561439	Other Business Service Centers (Including Copy Shops)	$6.5	
561440	Collection Agencies	$6.5	
561450	Credit Bureaus	$6.5	
561491	Repossession Services	$6.5	
561492	Court Reporting and Stenotype Services	$6.5	
561499	All Other Business Support Services	[10] $3.5	
561510	Travel Agencies [10]	[10] $6.5	
561520	Tour Operators [10]	$6.5	
561591	Convention and Visitors Bureaus	$6.5	
561599	All Other Travel Arrangement and Reservation Services	$11.5	
561611	Investigation Services	$17.0	
561612	Security Guards and Patrol Services	$11.5	
561613	Armored Car Services	$11.5	
561621	Security Systems Services (except Locksmiths)	$6.5	
561622	Locksmiths	$6.5	
561710	Exterminating and Pest Control Services	$15.0	
561720	Janitorial Services	$6.5	
561730	Landscaping Services	$4.5	
561740	Carpet and Upholstery Cleaning Services	$6.5	
561790	Other Services to Buildings and Dwellings	$6.5	
561910	Packaging and Labeling Services	[10] $6.5	
561920	Convention and Trade Show Organizers [10]	$6.5	
561990	All Other Support Services		
	Subsector 562—Waste Management and Remediation Services		
562111	Solid Waste Collection	$11.5	
562112	Hazardous Waste Collection	$11.5	
562119	Other Waste Collection	$11.5	
562211	Hazardous Waste Treatment and Disposal	$11.5	
562212	Solid Waste Landfill	$11.5	
562213	Solid Waste Combustors and Incinerators	$11.5	
562219	Other Nonhazardous Waste Treatment and Disposal	$13.0	
562910	Remediation Services		[14] 500
Except,	Environmental Remediation Services [14]	$11.5	
562920	Materials Recovery Facilities	$6.5	
562991	Septic Tank and Related Services	$6.5	
562998	All Other Miscellaneous Waste Management Services		
	Sector 61—Educational Services		
	Subsector 611—Educational Services		
611110	Elementary and Secondary Schools	$6.5	
611210	Junior Colleges	$6.5	
611310	Colleges, Universities and Professional Schools	$6.5	
611410	Business and Secretarial Schools	$6.5	
611420	Computer Training	$6.5	
611430	Professional and Management Development Training	$6.5	
611511	Cosmetology and Barber Schools	$23.5	
611512	Flight Training	$6.5	
611513	Apprenticeship Training	$6.5	
611519	Other Technical and Trade Schools	[15] $32.5	
Except,	Job Corps Centers [15]	$6.5	
611610	Fine Arts Schools	$6.5	
611620	Sports and Recreation Instruction	$6.5	
611630	Language Schools	$6.5	
611691	Exam Preparation and Tutoring	$6.5	
611692	Automobile Driving Schools	$6.5	
611699	All Other Miscellaneous Schools and Instruction	$6.5	
611710	Educational Support Services	$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
Sector 62—Health Care and Social Assistance			
Subsector 621—Ambulatory Health Care Services			
621111	Offices of Physicians (except Mental Health Specialists)	$9.0	
621112	Offices of Physicians, Mental Health Specialists	$9.0	
621210	Offices of Dentists	$6.5	
621310	Offices of Chiropractors	$6.5	
621320	Offices of Optometrists	$6.5	
621330	Offices of Mental Health Practitioners (except Physicians)	$6.5	
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists.	$6.5	
621391	Offices of Podiatrists	$6.5	
621399	Offices of All Other Miscellaneous Health Practitioners	$9.0	
621410	Family Planning Centers	$9.0	
621420	Outpatient Mental Health and Substance Abuse Centers	$9.0	
621491	HMO Medical Centers	$31.5	
621492	Kidney Dialysis Centers	$9.0	
621493	Freestanding Ambulatory Surgical and Emergency Centers	$9.0	
621498	All Other Outpatient Care Centers	$12.5	
621511	Medical Laboratories	$12.5	
621512	Diagnostic Imaging Centers	$12.5	
621610	Home Health Care Services	$6.5	
621910	Ambulance Services	$9.0	
621991	Blood and Organ Banks	$9.0	
621999	All Other Miscellaneous Ambulatory Health Care Services	$9.0	
Subsector 622—Hospitals			
622110	General Medical and Surgical Hospitals	$31.5	
622210	Psychiatric and Substance Abuse Hospitals	$31.5	
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	$31.5	
Subsector 623—Nursing and Residential Care Facilities			
623110	Nursing Care Facilities	$12.5	
623210	Residential Mental Retardation Facilities	$9.0	
623220	Residential Mental Health and Substance Abuse Facilities	$6.5	
623311	Continuing Care Retirement Communities	$12.5	
623312	Homes for the Elderly	$6.5	
623990	Other Residential Care Facilities	$6.5	
Subsector 624—Social Assistance			
624110	Child and Youth Services	$6.5	
624120	Services for the Elderly and Persons with Disabilities	$6.5	
624190	Other Individual and Family Services	$6.5	
624210	Community Food Services	$6.5	
624221	Temporary Shelters	$6.5	
624229	Other Community Housing Services	$6.5	
624230	Emergency and Other Relief Services	$6.5	
624310	Vocational Rehabilitation Services	$6.5	
624410	Child Day Care Services	$6.5	
Sector 71—Arts, Entertainment and Recreation			
Sector 71—Arts, Entertainment and Recreation			
Subsector 711—Performing Arts, Spectator Sports and Related Industries			
711110	Theater Companies and Dinner Theaters	$6.5	
711120	Dance Companies	$6.5	
711130	Musical Groups and Artists	$6.5	
711190	Other Performing Arts Companies	$6.5	
711211	Sports Teams and Clubs	$6.5	
711212	Race Tracks	$6.5	
711219	Other Spectator Sports	$6.5	
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities.	$6.5	
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities.	$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures.	$6.5	
711510	Independent Artists, Writers, and Performers	$6.5	
	Subsector 712—Museums, Historical Sites and Similar Institutions		
712110	Museums	$6.5	
712120	Historical Sites	$6.5	
712130	Zoos and Botanical Gardens	$6.5	
712190	Nature Parks and Other Similar Institutions	$6.5	
	Subsector 713—Amusement, Gambling and Recreation Industries		
713110	Amusement and Theme Parks	$6.5	
713120	Amusement Arcades	$6.5	
713210	Casinos (except Casino Hotels)	$6.5	
713290	Other Gambling Industries	$6.5	
713910	Golf Courses and Country Clubs	$6.5	
713920	Skiing Facilities	$6.5	
713930	Marinas	$6.5	
713940	Fitness and Recreational Sports Centers	$6.5	
713950	Bowling Centers	$6.5	
713990	All Other Amusement and Recreation Industries	$6.5	
	Sector 72—Accommodation and Food Services		
	Subsector 721—Accommodation		
721110	Hotels (except Casino Hotels) and Motels	$6.5	
721120	Casino Hotels	$6.5	
721191	Bed and Breakfast Inns	$6.5	
721199	All Other Traveler Accommodation	$6.5	
721211	RV (Recreational Vehicle) Parks and Campgrounds	$6.5	
721214	Recreational and Vacation Camps (except Campgrounds)	$6.5	
721310	Rooming and Boarding Houses	$6.5	
	Subsector 722—Food Services and Drinking Places		
722110	Full-Service Restaurants	$6.5	
722211	Limited-Service Restaurants	$6.5	
722212	Cafeterias, Grill Buffets, and Buffets	$6.5	
722213	Snack and Nonalcoholic Beverage Bars	$6.5	
722310	Food Service Contractors	$19.0	
722320	Caterers	$6.5	
722330	Mobile Food Services	$6.5	
722410	Drinking Places (Alcoholic Beverages)	$6.5	
	Sector 81—Other Services (except Public Administration)		
	Subsector 811—Repair and Maintenance		
811111	General Automotive Repair	$6.5	
811112	Automotive Exhaust System Repair	$6.5	
811113	Automotive Transmission Repair	$6.5	
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	$6.5	
811121	Automotive Body, Paint and Interior Repair and Maintenance	$6.5	
811122	Automotive Glass Replacement Shops	$6.5	
811191	Automotive Oil Change and Lubrication Shops	$6.5	
811192	Car Washes	$6.5	
811198	All Other Automotive Repair and Maintenance	$6.5	
811211	Consumer Electronics Repair and Maintenance	$23.0	
811212	Computer and Office Machine Repair and Maintenance	$6.5	
811213	Communication Equipment Repair and Maintenance	$6.5	
811219	Other Electronic and Precision Equipment Repair and Maintenance	$6.5	
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	$6.5	
811411	Home and Garden Equipment Repair and Maintenance	$6.5	
811412	Appliance Repair and Maintenance	$6.5	
811420	Reupholstery and Furniture Repair	$6.5	
811430	Footwear and Leather Goods Repair	$6.5	
811490	Other Personal and Household Goods Repair and Maintenance	$6.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. Industry Title	Size standards in millions of dollars	Size standards in number of employees
	Subsector 812—Personal and Laundry Services		
812111	Barber Shops	$6.5	
812112	Beauty Salons	$6.5	
812113	Nail Salons	$6.5	
812191	Diet and Weight Reducing Centers	$6.5	
812199	Other Personal Care Services	$6.5	
812210	Funeral Homes and Funeral Services	$6.5	
812220	Cemeteries and Crematories	$6.5	
812310	Coin-Operated Laundries and Drycleaners	$4.5	
812320	Drycleaning and Laundry Services (except Coin-Operated)	$13.0	
812331	Linen Supply	$13.0	
812332	Industrial Launderers	$6.5	
812910	Pet Care (except Veterinary) Services	$6.5	
812921	Photo Finishing Laboratories (except One-Hour)	$6.5	
812922	One-Hour Photo Finishing	$6.5	
812930	Parking Lots and Garages	$6.5	
812990	All Other Personal Services	$6.5	
	Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations		
813110	Religious Organizations	$6.5	
813211	Grantmaking Foundations	$6.5	
813212	Voluntary Health Organizations	$6.5	
813219	Other Grantmaking and Giving Services	$6.5	
813311	Human Rights Organizations	$6.5	
813312	Environment, Conservation and Wildlife Organizations	$6.5	
813319	Other Social Advocacy Organizations	$6.5	
813410	Civic and Social Organizations	$6.5	
813910	Business Associations	$6.5	
813920	Professional Organizations	$6.5	
813930	Labor Unions and Similar Labor Organizations	$6.5	
813940	Political Organizations	$6.5	
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations).	$6.5	
	Sector 92—Public Administration [18]		
	(Small business size standards are not established for this sector. Establishments in the Public Administration sector are Federal, state, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments.)		

Footnotes

1. *NAICS codes 221111, 221112, 221113, 221119, 221121,* and *221122*—A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

2. *NAICS code 237990*—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

3. *NAICS code 311421*—For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

4. *NAICS code 324110*—For purposes of Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

5. *NAICS code 326211*—For Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(a) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent

of the value of its total worldwide manufacture,

(b) The value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(c) The value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

6. *NAICS Subsectors 333, 334, 335* and *336*—For rebuilding machinery or equipment on a factory basis, or equivalent, use the NAICS code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a "manufacturer" although the activities may be classified under a manufacturing NAICS code. Ordinary repair services or preservation are not considered rebuilding.

7. *NAICS code 336413*—Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under NAICS code 336413.

8. *NAICS Codes 522110, 522120, 522130, 522190, 522210* and *522293*—A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. "Assets" for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

9. *NAICS code 531190*—Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $19.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

10. *NAICS codes 488510 (part) 531210, 541810, 561510, 561520,* and *561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

11. *NAICS codes 541711 and 541712*—For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(a) "Research and Development" means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See §121.701 of these regulations.

(c) "Research and Development" for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

12. *NAICS code 561210*—Facilities Support Services:

(a) If one or more activities of Facilities Support Services as defined in paragraph (b) (below in this footnote) can be identified with a specific industry and that industry accounts for 50% or more of the value of an entire procurement, then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.

(b) "Facilities Support Services" requires the performance of three or more separate activities in the areas of services or specialty trade contractors industries. If services are performed, these service activities must each be in a separate NAICS industry. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, etc.), all such specialty trade contractors activities are considered a single activity and classified as "Building and Property Specialty Trade Services." Since "Building and Property Specialty Trade Services" is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as "Facilities Support Services."

13. *NAICS code 238990*—Building and Property Specialty Trade Services: If a procurement requires the use of multiple specialty trade contractors (*i.e.*, plumbing, painting, plastering, carpentry, etc.), and no specialty trade accounts for 50% or more of the value of the procurement, all such specialty trade contractors activities are considered a single activity and classified as Building and Property Specialty Trade Services.

14. *NAICS 562910*—Environmental Remediation Services:

(a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry

is that of the particular industry and not the Environmental Remediation Services Industry.

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment (such as, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, removal of contaminated materials, storage of contaminated materials or security and site closeouts), although the general purpose of the procurement need not necessarily include remedial actions. Also, the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (e.g., engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Specialty Trade Contractors; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services, Testing Laboratories; and Research and Development in the Physical, Engineering and Life Sciences. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

15. *Subsector 483*—Water Transportation—Offshore Marine Services: The applicable size standard shall be $25.5 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

16. *NAICS codes 611519*—Job Corps Centers. For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal Government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

17. *NAICS code 115310* (Support Activities for Forestry)—Forest Fire Suppression and Fuels Management Services are two components of Support Activities for Forestry. Forest Fire Suppression includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. Fuels Management Services firms provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

18. NAICS code 541519—An Information Technology Value Added Reseller provides a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. For purposes of Government procurement, an information technology procurement classified under this industry category must consist of at least 15% and not more than 50% of value added services as measured by the total price less the cost of information technology hardware, computer software, and profit. If the contract consists of less than 15% of value added services, then it must be classified under a NAICS manufacturing industry. If the contract consists of more than 50% of value added services, then it must be classified under the NAICS industry that best describes the predominate service of the procurement. To qualify as an Information Technology Value Added Reseller for purposes of SBA assistance, other than for Government procurement, a concern must be primarily engaged in providing information technology equipment and computer software and provide value added services which account for at least 15% of its receipts but not more than 50% of its receipts.

19. *NAICS Sector 92*—Small business size standards are not established for this sector. Establishments in the Public Administration sector are Federal, State, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments. Concerns performing operational services for the administration of a government program are classified under the NAICS private sector industry based on the activities performed. Similarly, procurements for these types of services are classified under the NAICS private sector industry that best describes the activities to be performed. For example, if a government agency issues a procurement for law enforcement services, the requirement would be classified using one of the NAICS

industry codes under 56161, Investigation, Guard, and Armored Car Services.

[65 FR 30840, May 15, 2000]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §121.201, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

SIZE ELIGIBILITY REQUIREMENTS FOR SBA FINANCIAL ASSISTANCE

§121.301 What size standards are applicable to financial assistance programs?

(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant business concern must satisfy two criteria:

(1) The size of the applicant alone (without affiliates) must not exceed the size standard designated for the industry in which the applicant is primarily engaged; and

(2) The size of the applicant combined with its affiliates must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher. These size standards are set forth in §121.201.

(b) For Development Company programs, an applicant must meet one of the following standards:

(1) The same standards applicable under paragraph (a) of this section; or

(2) Including its affiliates, tangible net worth not in excess of $7.5 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of $2.5 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (b)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Sum the results obtained in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(c) For the Small Business Investment Company (SBIC) program, an applicant must meet one of the following standards:

(1) The same standards applicable under paragraph (a) of this section; or

(2) Including its affiliates, tangible net worth not in excess of $18 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of $6 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (c)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Add the results obtained in paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(d) For Surety Bond Guarantee assistance—

(1) Any construction (general or special trade) concern or concern performing a contract for services is small if, together with its affiliates, its average annual receipts do not exceed $6.5

million, except as provided in §121.301(d)(3).

(2) Any concern not specified in paragraph (d)(1) of this section must meet the size standard for the primary industry in which it, combined with its affiliates, is engaged.

(3) For any contract or subcontract, public or private, to be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita or Wilma, a construction (general or special trade) concern or concern performing a contract for services is small if, together with its affiliates, it meets the size standard for the primary industry in which it, together with its affiliates, is engaged, or if it meets the size standard set forth in paragraph (d)(1), whichever is higher.

(e) The applicable size standards for purposes of SBA's financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25% whenever the applicant agrees to use all of the financial assistance within a labor surplus area. Labor surplus areas are listed monthly in the Department of Labor publication "Area Trends in Employment and Unemployment."

[61 FR 3286, Jan. 31, 1996, as amended at 66 FR 30648, June 7, 2001; 67 FR 3056, Jan. 23, 2002; 69 FR 29204, May 21, 2004; 70 FR 69047, 69052, Nov. 14, 2005; 70 FR 72594, Dec. 6, 2005; 71 FR 62208, Oct. 24, 2006]

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size status of an applicant for SBA financial assistance is determined as of the date the application for financial assistance is accepted for processing by SBA, except for applications under the Preferred Lenders Program (PLP), the Disaster Loan program, the SBIC program, and the New Markets Venture Capital (NMCV) program.

(b) For the Preferred Lenders program, size is determined as of the date of approval of the loan by the Preferred Lender.

(c) For disaster loan assistance (other than physical disaster loans), size status is determined as of the date the disaster commenced, as set forth in the Disaster Declaration. For economic injury disaster loan assistance under disaster declarations for Hurricanes Katrina, Rita, and Wilma, size status is determined as of the date SBA accepts the application for processing, and for applications submitted before December 6, 2005, whether denied because of size status or pending, such applications shall be deemed resubmitted on December 6, 2005. For pre-disaster mitigation loans, size status is determined as of the date SBA accepts a complete Pre-Disaster Mitigation Small Business Loan Application for processing. Refer to §123.408 of this chapter to find out what SBA considers to be a complete Pre-Disaster Mitigation Small Business Loan Application.

(d) For financial assistance from an SBIC licensee or an NMVC company, size is determined as of the date a concern's application is accepted for processing by the SBIC or the NMVC company.

(e) Changes in size after the applicable date when size is determined will not disqualify an applicant for assistance.

[61 FR 3286, Jan. 31, 1996, as amended at 64 FR 48276, Sept. 3, 1999; 67 FR 11880, Mar. 15, 2002; 67 FR 62337, Oct. 7, 2002; 69 FR 29204, May 21, 2004; 70 FR 72594, Dec. 6, 2005]

§ 121.303 What size procedures are used by SBA before it makes a formal size determination?

(a) A concern that submits an application for financial assistance is deemed to have certified that it is small under the applicable size standard. SBA may question the concern's status based on information supplied in the application or from any other source.

(b) A small business investment company, a development company, a surety bond company, or a preferred lender may accept as true the size information provided by an applicant, unless credible evidence to the contrary is apparent.

(c) Size is initially considered by the individual with final financial assistance authority. This is not a formal size determination. A formal determination may be requested prior to a denial of eligibility based on size.

(d) An applicant may request a formal size determination when assistance has been denied for size ineligibility. Except for disaster loan eligibility, a request for a formal size determination must be made to the Government Contracting Area Director serving the area in which the headquarters of the applicant is located, regardless of the location of the parent company or affiliates. For disaster loan assistance, the request for a size determination must be made to the Area Director for the Disaster Area Office which denied the assistance.

(e) There are no time limitations for making a formal size determination for purposes of financial assistance. The official making the formal size determination must provide a copy of the determination to the applicant, to the requesting SBA official; and to other interested SBA program officials.

§ 121.304 What are the size requirements for refinancing an existing SBA loan?

(a) A concern that applies to refinance an existing SBA loan or guarantee will be considered small for the refinancing even though its size has increased since the date of the original financing to exceed its applicable size standard, provided that:

(1) The increase in size is due to natural growth (as distinguished from merger, acquisition or similar management action); and

(2) SBA determines that refinancing is necessary to protect the Government's financial interest.

(b) If a concern's size has increased other than by natural growth, the concern and its affiliates must be small at the time the application for refinancing is accepted for processing by SBA.

§ 121.305 What size eligibility requirements exist for obtaining financial assistance relating to particular procurements?

A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement.

SIZE ELIGIBILITY REQUIREMENTS FOR GOVERNMENT PROCUREMENT

§ 121.401 What procurement programs are subject to size determinations?

The rules set forth in §§ 121.401 through 121.413 apply to all Federal procurement programs for which status as a small business is required or advantageous, including the small business set-aside program, SBA's Certificate of Competency program, SBA's 8(a) Business Development program, SBA's HUBZone program, SBA's Service-Disabled Veteran-Owned Small Business program, the Small Business Subcontracting program, and the Federal Small Disadvantaged Business (SDB) program.

[70 FR 56814, Sept. 29, 2005]

§ 121.402 What size standards are applicable to Federal Government Contracting programs?

(a) A concern must not exceed the size standard for the NAICS code specified in the solicitation. The contracting officer must specify the size standard in effect on the date the solicitation is issued. If SBA amends the size standard and it becomes effective before the date initial offers (including price) are due, the contracting officer may amend the solicitation and use the new size standard.

(b) The procuring agency contracting officer, or authorized representative, designates the proper NAICS code and size standard in a solicitation, selecting the NAICS code which best describes the principal purpose of the product or service being acquired. Primary consideration is given to the industry descriptions in the NAICS United States Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased. Other factors considered include previous Government procurement classifications of the same or similar products or services, and the classification which would best serve the purposes of the Small Business Act.

A procurement is usually classified according to the component which accounts for the greatest percentage of contract value. Procurements for supplies must be classified under the appropriate manufacturing NAICS code, not under the wholesale trade NAICS code.

(c) The NAICS code assigned to a procurement and its corresponding size standard is final unless timely appealed to SBA's Office of Hearings and Appeals (OHA), or unless SBA assigns an NAICS code or size standard as provided in paragraph (d) of this section.

(d) An unclear, incomplete or missing NAICS code designation or size standard in the solicitation may be clarified, completed or supplied by SBA in connection with a formal size determination or size appeal.

(e) Any offeror or other interested party adversely affected by an NAICS code designation or size standard designation may appeal the designations to OHA under part 134 of this chapter.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004]

§ 121.403 Are SBA size determinations and NAICS code designations binding on parties?

Formal size determinations and NAICS code designations made by authorized SBA officials are binding upon the parties. Opinions otherwise provided by SBA officials to contracting officers or others are advisory in nature, and are not binding or appealable.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

§ 121.404 When does SBA determine the size status of a business concern?

(a) SBA determines the size status of a concern, including its affiliates, as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer (or other formal response to a solicitation) which includes price. Where an agency modifies a solicitation so that initial offers are no longer responsive to the solicitation, a concern must recertify that it is a small business at the time it submits a responsive offer, which includes price, to the modified solicitation.

(b) A concern applying to be certified as a Participant in SBA's 8(a) Business Development program (under part 124, subpart A, of this chapter), as a small disadvantaged business (under part 124, subpart B, of this chapter), or as a HUBZone small business (under part 126 of this chapter) must qualify as a small business for its primary industry classification as of the date of its application and the date of certification by SBA.

(c) The size status of an applicant for a Certificate of Competency (COC) relating to an unrestricted procurement is determined as of the date of the concern's application for the COC.

(d) Size status for purposes of compliance with the nonmanufacturer rule set forth in § 121.406(b)(1) and the ostensible subcontractor rule set forth in § 121.103(h)(4) is determined as of the date of the final proposal revision for negotiated acquisitions and final bid for sealed bidding.

(e) For subcontracting purposes, a concern must qualify as small as of the date that it certifies that it is small for the subcontract. The applicable size standard is that which is set forth in § 121.410 and which is in effect at the time the concern self-certifies that it is small for the subcontract.

(f) For purposes of two-step sealed bidding under subpart 14.5 of the FAR, 48 CFR, a concern must qualify as small as of the date that it certifies that it is small as part of its step one proposal.

(g) A concern that qualified as a small business at the time it receives a contract is considered a small business throughout the life of that contract. Where a concern grows to be other than small, the procuring agency may exercise options and still count the award as an award to a small business. However, the following exceptions apply:

(1) Within 30 days of an approved contract novation, a contractor must recertify its small business size status to the procuring agency, or inform the procuring agency that it is other than small. If the contractor is other than small, the agency can no longer count the options or orders issued pursuant

to the contract, from that point forward, towards its small business goals.

(2) In the case of a merger or acquisition, where contract novation is not required, the contractor must, within 30 days of the transaction becoming final, recertify its small business size status to the procuring agency, or inform the procuring agency that it is other than small. If the contractor is other than small, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its small business goals. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new size status.

(3) For the purposes of contracts with durations of more than five years (including options), including Multiple Award Schedule (MAS) Contracts, Multiple Agency Contracts (MACs) and Government-wide Acquisition Contracts (GWACs), a contracting officer must request that a business concern re-certify its small business size status no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option thereafter. If the contractor certifies that it is other than small, the agency can no longer count the options or orders issued pursuant to the contract towards its small business prime contracting goals. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new size status.

(i) A business concern that certified itself as other than small, either initially or prior to an option being exercised, may recertify itself as small for a subsequent option period if it meets the applicable size standard.

(ii) Re-certification does not change the terms and conditions of the contract. The limitations on subcontracting, non-manufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract.

(iii) A request for a size re-certification shall include the size standard in effect at the time of re-certification that corresponds to the NAICS code that that was initially assigned to the contract.

(iv) A contracting officer must assign a NAICS code and size standard to each order under a long-term contract. The NAICS code and size standard assigned to an order must correspond to a NAICS code and size standard assigned to the underlying long-term contract. A concern will be considered small for that order only if it certified itself as small under the same or lower size standard.

(v) Where the contracting officer explicitly requires concerns to recertify their size status in response to a solicitation for an order, SBA will determine size as of the date the concern submits its self-representation as part of its response to the solicitation for the order.

(vi) A Blanket Purchase Agreement (BPA) is not a contract. Goods and services are acquired under a BPA when an order is issued. Thus, a concern's size may not be determined based on its size at the time of a response to a solicitation for a BPA.

(h) A follow-on or renewal contract is a new contracting action. As such, size is determined as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price for the follow-on or renewal contract.

[69 FR 29205, May 21, 2004, as amended at 71 FR 19813, Apr. 18, 2006; 71 FR 66443, Nov. 15, 2006]

§ 121.405 May a business concern self-certify its small business size status?

(a) A concern must self-certify it is small under the size standard specified in the solicitation, or as clarified, completed or supplied by SBA pursuant to § 121.402(d).

(b) A contracting officer may accept a concern's self-certification as true for the particular procurement involved in the absence of a written protest by other offerors or other credible information which causes the contracting officer or SBA to question the size of the concern.

(c) Procedures for protesting the self-certification of an offeror are set forth in §§ 121.1001 through 121.1009.

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or 8(a) contracts?

(a) *General.* In order to qualify as a small business concern for a small business set-aside or 8(a) contract to provide manufactured products, an offeror must either:

(1) Be the manufacturer of the end item being procured (and the end item must be manufactured or produced in the United States); or

(2) Comply with the requirements of paragraph (b), (c) or (d) of this section as a nonmanufacturer, a kit assembler or a supplier under Simplified Acquisition Procedures.

(b) *Nonmanufacturers.* (1) A concern may qualify for a requirement to provide manufactured products as a nonmanufacturer if it:

(i) Does not exceed 500 employees;

(ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied; and

(iii) Will supply the end item of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(3) of this section.

(2) For size purposes, there can be only one manufacturer of the end item being acquired. The manufacturer is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired. The end item must possess characteristics which, as a result of mechanical, chemical or human action, it did not possess before the original substances, parts or components were assembled or transformed. The end item may be finished and ready for utilization or consumption, or it may be semifinished as a raw material to be used in further manufacturing. Firms which perform only minimal operations upon the item being procured do not qualify as manufacturers of the end item. Firms that add substances, parts, or components to an existing end item to modify its performance will not be considered the end item manufacturer where those identical modifications can be performed by and are available from the manufacturer of the existing end item:

(i) SBA will evaluate the following factors in determining whether a concern is the manufacturer of the end item:

(A) The proportion of total value in the end item added by the efforts of the concern, excluding costs of overhead, testing, quality control, and profit;

(B) The importance of the elements added by the concern to the function of the end item, regardless of their relative value; and

(C) The concern's technical capabilities; plant, facilities and equipment; production or assembly line processes; packaging and boxing operations; labeling of products; and product warranties.

(ii) Firms that provide computer and other information technology equipment primarily consisting of component parts (such as motherboards, video cards, network cards, memory, power supplies, storage devices, and similar items) who install components totaling less than 50% of the value of the end item are generally not considered the manufacturer of the end item.

(3) The Administrator or designee may waive the requirement set forth in paragraph (b)(1)(iii) of this section under the following two circumstances:

(i) The contracting officer has determined that no small business manufacturer or processor reasonably can be expected to offer a product meeting the specifications (including period for performance) required by a particular solicitation and SBA reviews and accepts that determination; or

(ii) SBA determines that no small business manufacturer or processor of the product or class of products is available to participate in the Federal procurement market.

(4) The two waiver possibilities identified in paragraph (b)(3) of this section are called "individual" and "class" waivers respectively, and the procedures for them are contained in § 121.1204.

(5) Any SBA waiver of the nonmanufacturer rule has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act.

(c) *Kit assemblers.* (1) Where the manufactured item being acquired is a kit of supplies or other goods provided by an offeror for a special purpose, the offeror cannot exceed 500 employees, and 50 percent of the total value of the components of the kit must be manufactured by business concerns in the United States which are small under the size standards for the NAICS codes of the components being assembled. The offeror need not itself be the manufacturer of any of the items assembled.

(2) Where the Government has specified an item for the kit which is not produced by U.S. small business concerns, such item shall be excluded from the calculation of total value in paragraph (c)(1) of this section.

(d) *Simplified Acquisition Procedures.* Where the procurement of a manufactured item is processed under Simplified Acquisition Procedures, as defined in § 13.101 of the Federal Acquisition Regulation (FAR) (48 CFR 13.101), and where the anticipated cost of the procurement will not exceed $25,000, the offeror need not supply the end product of a small business concern as long as the product acquired is manufactured or produced in the United States, and the offeror does not exceed 500 employees. The offeror need not itself be the manufacturer of any of the items acquired.

(e) These requirements do not apply to small business concern subcontractors.

[61 FR 3286, Jan. 31, 1996; 61 FR 7986, Mar. 1, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004]

§ 121.407 What are the size procedures for multiple item procurements?

If a procurement calls for two or more specific end items or types of services with different size standards and the offeror may submit an offer on any or all end items or types of services, the offeror must meet the size standard for each end item or service item for which it submits an offer. If the procurement calls for more than one specific end item or type of service and an offeror is required to submit an offer on all items, the offeror may qualify as a small business for the procurement if it meets the size standard of the item which accounts for the greatest percentage of the total contract value.

§ 121.408 What are the size procedures for SBA's Certificate of Competency Program?

(a) A firm which applies for a COC must file an "Application for Small Business Size Determination" (SBA Form 355). If the initial review of SBA Form 355 indicates the applicant, including its affiliates, is small for purposes of the COC program, SBA will process the application for COC. If the review indicates the applicant, including its affiliates, is other than small, SBA will initiate a formal size determination as set forth in § 121.1009. In such a case, SBA will not further process the COC application until a formal size determination is made.

(b) A concern is ineligible for a COC if a formal SBA size determination finds the concern other than small.

§ 121.409 What size standard applies in an unrestricted procurement for Certificate of Competency purposes?

For the purpose of receiving a Certificate of Competency in an unrestricted procurement, the applicable size standard is that corresponding to the NAICS code set forth in the solicitation. For a manufactured product, a concern must also furnish a domestically produced or manufactured product, regardless of the size status of the product manufacturer. The offeror need not be the manufacturer of any of the items acquired.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

§ 121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?

For subcontracting purposes pursuant to sections 8(d) of the Small Business Act, a concern is small for subcontracts which relate to Government procurements if it does not exceed the size standard for the NAICS code that the prime contractor believes best describes the product or service being acquired by the subcontract. However, subcontracts for engineering services awarded under the National Energy

Policy Act of 1992 have the same size standard as Military and Aerospace Equipment and Military Weapons under NAICS 541213.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004]

§ 121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?

(a) Prime contractors may rely on the information contained in the Central Contractor Registration (CCR), or equivalent data base maintained or sanctioned by SBA, as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. Even though a concern is on a small business source list, it must still qualify and self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor.

(b) Upon determination of the successful subcontract offeror for a competitive subcontract, but prior to award, the prime contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror.

(c) The self-certification of a concern subcontracting or proposing to subcontract under section 8(d) of the Small Business Act may be protested by the contracting officer, the prime contractor, the appropriate SBA official or any other interested party.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29205, May 21, 2004]

§ 121.412 What are the size procedures for partial small business set-asides?

A firm is required to meet size standard requirements only for the small business set-aside portion of a procurement, and is not required to qualify as a small business for the unrestricted portion.

§ 121.413 [Reserved]

SIZE ELIGIBILITY REQUIREMENTS FOR SALES OR LEASE OF GOVERNMENT PROPERTY

§ 121.501 What programs for sales or leases of Government property are subject to size determinations?

Sections 121.501 through 121.512 apply to small business size determinations for the purpose of the sale or lease of Government property, including the Timber Sales Program, the Special Salvage Timber Sales Program, and the sale of Government petroleum, coal and uranium.

§ 121.502 What size standards are applicable to programs for sales or leases of Government property?

(a) Unless otherwise specified in this part—

(1) A concern primarily engaged in manufacturing is small for sales or leases of Government property if it does not exceed 500 employees;

(2) A concern not primarily engaged in manufacturing is small for sales or leases of Government property if it has annual receipts not exceeding $6.5 million.

(b) Size status for such sales and leases is determined by the primary industry of the applicant business concern.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 3056, Jan. 23, 2002; 70 FR 72594, Dec. 6, 2005]

§ 121.503 Are SBA size determinations binding on parties?

Formal size determinations based upon a specific Government sale or lease, or made in response to a request from another Government agency under § 121.901, are binding upon the parties. Other SBA opinions provided to contracting officers or others are only advisory, and are not binding or appealable.

§ 121.504 When does SBA determine the size status of a business concern?

SBA determines the size status of a concern (including its affiliates) as of the date the concern submits a written self-certification that it is small to the

Government as part of its initial offer including price where there is a specific sale or lease at issue, or as set forth in § 121.903 if made in response to a request of another Government agency.

§ 121.505 What is the effect of a self-certification?

(a) A contracting officer may accept a concern's self-certification as true for the particular sale or lease involved, in the absence of a written protest by other offerors or other credible information which would cause the contracting officer or SBA to question the size of the concern.

(b) Procedures for protesting the self-certification of an offeror are set forth in §§ 121.1001 through 121.1009.

§ 121.506 What definitions are important for sales or leases of Government-owned timber?

(a) *Forest product industry* means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw materials.

(b) *Logging of timber* means felling and bucking, yarding, and/or loading. It does not mean hauling.

(c) *Manufacture of logs* means, at a minimum, breaking down logs into rough cuts of the finished product.

(d) *Sell* means, in addition to its usual and customary meaning, the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer, such as the sale of the assets of a concern after it has been awarded one or more set-aside sales of timber.

(e) *Significant logging of timber* means that a concern uses its own employees to perform at least two of the following: felling and bucking, yarding, and loading.

§ 121.507 What are the size standards and other requirements for the purchase of Government-owned timber (other than Special Salvage Timber)?

(a) To be small for purposes of the sale of Government-owned timber (other than Special Salvage Timber) a concern must:

(1) Be primarily engaged in the logging or forest products industry;

(2) Not exceed 500 employees, taking into account its affiliates; and

(3) If it does not intend at the time of the offer to resell the timber—

(i) Agree that it will manufacture the logs with its own facilities or those of another business which meets the requirements of paragraphs (a)(1) and (a)(2) of this section;

(ii) Agree that if it eventually resells the timber, it will resell no more than 30% of the sawtimber volume to other businesses which do not meet the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(iii) Agree that if it becomes acquired or controlled by a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, it will require as a condition of the acquisition or change of control that the acquiring or controlling business resell at least 70% of the sawtimber volume to businesses which do meet the requirements of paragraphs (a)(1) and (a)(2) of this section; or

(4) If it intends at the time of offer to resell the timber—

(i) Agree that it will not sell more than 30% of such timber (50% of such timber if the concern is an Alaskan business) to a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(ii) Agree that if it becomes acquired or controlled by a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, it will require as a condition of the acquisition or change of control that the acquiring or controlling business resell at least 70% of the sawtimber volume (or at least 50% of the sawtimber volume, if it is an Alaskan business) to businesses which meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(b) For a period of three years following the date upon which a concern purchases timber under a small business set-aside (other than through the Special Salvage Timber Sale program), it must maintain a record of:

(1) The name, address and size status of every concern to which it sells the timber or sawlogs; and

(2) The species, grades and volumes of sawlogs sold.

(c) For a period of three years following the date upon which a concern purchases timber, it must by contract require all small business repurchasers of the sawlogs or timber it purchased under the small business set-aside to maintain the records described in paragraph (b) of this section.

§ 121.508 What are the size standards and other requirements for the purchase of Government-owned Special Salvage Timber?

(a) In order to purchase Government-owned Special Salvage Timber from the United States Forest Service or the Bureau of Land Management as a small business, a concern must:

(1) Be primarily engaged in the logging or forest product industry;

(2) Have, together with its affiliates, no more than twenty-five employees during any pay period for the last twelve months; and

(3) If it does not intend at the time of offer to resell the timber—

(i) Agree that it will manufacture a significant portion of the logs with its own employees; and

(ii) Agree that it will log the timber only with its own employees or with employees of another business which is eligible for award of a Special Salvage Timber sales contract; or

(4) If it intends at the time of offer to resell the timber, agree that it will perform a significant portion of timber logging with its own employees and that it will subcontract the remainder of the timber logging to a concern which is eligible for award of a Special Salvage Timber sales contract.

§ 121.509 What is the size standard for leasing of Government land for coal mining?

A concern is small for this purpose if it:

(a) Together with its affiliates, does not have more than 250 employees;

(b) Maintains management and control of the actual mining operations of the tract; and

(c) Agrees that if it subleases the Government land, it will be to another small business, and that it will require its sublessors to agree to the same.

§ 121.510 What is the size standard for leasing of Government land for uranium mining?

A concern is small for this purpose if it, together with its affiliates, does not have more than 100 employees.

§ 121.511 What is the size standard for buying Government-owned petroleum?

A concern is small for this purpose if it is primarily engaged in petroleum refining and meets the size standard for a petroleum refining business.

§ 121.512 What is the size standard for stockpile purchases?

A concern is small for this purpose if:

(a) It is primarily engaged in the purchase of materials which are not domestic products; and

(b) Its annual receipts, together with its affiliates, do not exceed $51.5 million.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 3056, Jan. 23, 2002; 70 FR 72594, Dec. 6, 2005]

SIZE ELIGIBILITY REQUIREMENTS FOR THE 8(A) BUSINESS DEVELOPMENT PROGRAM

§ 121.601 What is a small business for purposes of admission to SBA's 8(a) Business Development program?

An applicant must not exceed the size standard corresponding to its primary industry classification in order to qualify for admission to SBA's 8(a) Business Development Program.

[69 FR 29205, May 21, 2004]

§ 121.602 At what point in time must a 8(a) BD applicant be small?

A 8(a) BD applicant must be small for its primary industry at the time SBA certifies it for admission into the program.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

§ 121.603 How does SBA determine whether a Participant is small for a particular 8(a) BD subcontract?

(a) *Self certification by Participant.* A 8(a) BD Participant must certify that

it qualifies as a small business under the NAICS code assigned to a particular 8(a) BD subcontract as part of its initial offer including price to the procuring agency. The Participant also must submit a copy of its offer, including its self-certification as to size, to the appropriate SBA district office at the same time it submits the offer to the procuring agency. *See* §121.404 for the time at which size is determined for, and §121.406 for the applicability of the nonmanufacturer rule to, 8(a) BD procurements.

(b) *Verification of size by SBA.* Within 30 days of its receipt of a Participant's size self-certification for a particular 8(a) BD subcontract, the SBA district office serving the geographic area in which the Participant's principal office is located will review the Participant's self-certification and determine if it is small for purposes of that subcontract. The SBA district office will review the Participant's most recent financial statements and other relevant data and then notify the Participant of its decision.

(c) *Changes in size between date of self-certification and date of award.* (1) Where SBA verifies that the selected Participant is small for a particular procurement, subsequent changes in size up to the date of award, except those due to merger with or acquisition by another business concern, will not affect the firm's size status for that procurement.

(2) Where a Participant has merged with or been acquired by another business concern between the date of its self-certification and the date of award, the concern must recertify its size status, and SBA must verify the new certification before award can occur.

(d) *Finding Participant to be other than small.* (1) A Participant may request a formal size determination (pursuant to §§121.1001 through 121.1009) with the SBA Government Contracting Area Office serving the geographic area in which the principal office of the Participant is located within 5 working days of its receipt of notice from the SBA district office that it is not small for a particular 8(a) BD subcontract.

(2) Where the Participant does not timely request a formal size determination, SBA may accept the procurement in support of another Participant, or may rescind its acceptance of the offer for the 8(a) BD program, as appropriate.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29206, May 21, 2004]

§ 121.604 Are 8(a) BD Participants considered small for purposes of other SBA assistance?

A concern which SBA determines to be a small business for the award of a 8(a) BD subcontract will be considered to have met applicable size eligibility requirements of other SBA programs where that assistance directly and primarily relates to the performance of the 8(a) BD subcontract in question.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

SIZE ELIGIBILITY REQUIREMENTS FOR THE SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM

§ 121.701 What SBIR programs are subject to size determinations?

(a) These sections apply to size status for award of a funding agreement pursuant to the Small Business Innovation Development Act of 1982 (Pub. L. 97-219, 15 U.S.C. 638(e) through (k)).

(b) *Funding agreement officer* means a contracting officer, a grants officer, or a cooperative agreement officer.

(c) *Funding agreement* means any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such work includes:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

§ 121.702 What size standards are applicable to the SBIR program?

To be eligible for award of funding agreements in the SBA's Small Business Innovation Research (SBIR) program, a business concern must meet the requirements of paragraphs (a) and (b) below:

(a) *Ownership and control.* (1) An SBIR awardee must (i) be a concern which is at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States; or

(ii) Be a concern which is at least 51% owned and controlled by another business concern that is itself at least 51% owned and controlled by individuals who are citizens of, or permanent resident aliens in the United States; or

(iii) Be a joint venture in which each entity to the venture must meet the requirements set forth in either paragraphs (a)(1)(i) or (a)(1)(ii) of this section.

(2) If an Employee Stock Ownership Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner.

(3) If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner.

(b) *Size.* An SBIR awardee, together with its affiliates, not have more than 500 employees.

[69 FR 70185, Dec. 3, 2004, as amended at 71 FR 69183, Nov. 30, 2006]

§ 121.703 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions based upon a specific funding agreement, and are binding upon the parties. Other SBA opinions provided to funding agreement officers or others, are only advisory, and are not binding or appealable.

§ 121.704 When does SBA determine the size status of a business concern?

The size status of a concern for the purpose of a funding agreement under the SBIR program is determined as of the date of the award for both Phase I and Phase II SBIR awards or on the date of the request for a size determination, if an award is pending.

[69 FR 29206, May 21, 2004]

§ 121.705 Must a business concern self-certify its size status?

(a) A firm must self-certify that it currently meets the eligibility requirements set forth in § 121.702 of this title or will meet those eligibility requirements on the date of award of a funding agreement for a Phase I or Phase II SBIR award.

(b) A funding agreement officer may accept a concern's self-certification as true for the particular funding agreement involved in the absence of a written protest by other offerors or other credible information which would cause the funding agreement officer or SBA to question the size of the concern.

(c) Procedures for protesting an offeror's self-certification are set forth in §§ 121.1001 through 121.1009.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

SIZE ELIGIBILITY REQUIREMENTS FOR PAYING REDUCED PATENT FEES

§ 121.801 May patent fees be reduced if a concern is small?

These sections apply to size status for the purpose of paying reduced patent fees authorized by Pub. L. 97–247, 96 Stat. 317. The eligibility requirements for independent inventors and nonprofit organizations for the purpose of paying reduced patent fees are set forth in regulations of the Patent and Trademark Office of the Department of Commerce, 37 CFR 1.9, 1.27, 1.28.

§ 121.802 What size standards are applicable to reduced patent fees programs?

A concern eligible for reduced patent fees is one:

(a) Whose number of employees, including affiliates, does not exceed 500 persons; and

(b) Which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit

organization or a small business concern under this section.

§ 121.803 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions, based upon a specific patent application pursuant to the rules of the Patent and Trademark Office, Department of Commerce, and are binding upon the parties. Other SBA opinions provided to patent applicants or others are only advisory, and are not binding or appealable.

§ 121.804 When does SBA determine the size status of a business concern?

Size status is determined as of the date of the patent applicant's written verification of size.

§ 121.805 May a business concern self-certify its size status?

(a) A concern verifies its size status with its submission of its patent application.

(b) Any attempt to establish small size status improperly (fraudulently, through gross negligence, or otherwise) may result in remedial action by the Patent and Trademark Office.

(c) In the absence of credible information indicating otherwise, the Patent and Trademark Office may accept the verification by the concern as a small business as true.

(d) Questions concerning the size verification are resolved initially by the Patent and Trademark Office. If not verified as small, the applicant may request a formal SBA size determination.

SIZE ELIGIBILITY REQUIREMENTS FOR COMPLIANCE WITH PROGRAMS OF OTHER AGENCIES

§ 121.901 Can other Government agencies obtain SBA size determinations?

Upon request by another Government agency, SBA will provide a size determination, under SBA rules, standards and procedures, for its use in determining compliance with small business requirements of its statutes, regulations or programs.

§ 121.902 What size standards are applicable to programs of other agencies?

SBA size standards. The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless the agency and SBA agree otherwise.

[67 FR 13716, Mar. 26, 2002]

§ 121.903 How may an agency use size standards for its programs that are different than those established by SBA?

(a) Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. In limited circumstances, if they decide the SBA size standard is not suitable for their programs, then agency heads may establish a more appropriate small business definition for the exclusive use in such programs, but only when:

(1) The size standard will determine:

(i) The size of a manufacturing concern by its average number of employees based on the preceding twelve calendar months, determined according to § 121.106;

(ii) The size of a services concern by its average annual receipts over a period of at least three years, determined according to § 121.104;

(iii) The size of other concerns on data over a period of at least three years; or,

(iv) Other factors approved by SBA;

(2) The agency has consulted in writing with SBA's Division Chief, office of Size Standards at least fourteen (14) calendar days before publishing the proposed rule which is part of the rulemaking process. The written consultation will include:

(i) What size standard the agency contemplates using;

(ii) To what agency program it will apply;

(iii) How the agency arrived at this particular size standard for this program; and,

(iv) Why SBA's existing size standards do not satisfy the program requirements;

(3) The agency proposes the size standard for public comment pursuant

to the Administrative Procedure Act, 5 U.S.C. 553;

(4) The agency provides a copy of the proposed rule, when it publishes it for public comment as part of the rule-making process, to SBA's Division Chief, Office of Size Standards; and

(5) SBA's Administrator approves the size standard before the agency adopts a final rule or otherwise prescribes the size standard for its use. The agency's request for the SBA Administrator's approval must include:

(i) Copies of all comments on the proposed size standard received in response to the proposed rule;

(ii) A separate written justification for the intended size standard;

(iii) A copy of the intended final rule if available at that time, or a copy of the intended final rule and preamble prior to its publication; and

(iv) Other information SBA may request in connection with the request.

(b) When approving any size standard established pursuant to this section, SBA's Administrator will 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 relevant factors.

(c) Where the agency head is developing a size standard for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to section 601(3) of the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish a size standard different from SBA's which is more appropriate for such analysis.

[67 FR 13716, Mar. 26, 2002]

§ 121.904 When does SBA determine the size status of a business concern?

For compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of the date set forth in the request of the other agency.

[67 FR 13716, Mar. 26, 2002]

PROCEDURES FOR SIZE PROTESTS AND REQUESTS FOR FORMAL SIZE DETERMINATIONS

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) *Size Status Protests.* (1) For SBA's Small Business Set-Aside Program, including the Property Sales Program, or any instance in which a procurement or order has been restricted to or reserved for small business or a particular group of small business, the following entities may file a size protest in connection with a particular procurement, sale or order:

(i) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates, or the Director, Office of Government Contracting; and

(iv) Other interested parties. Other interested parties include large businesses where only one concern submitted an offer for the specific procurement in question. A concern found to be other than small in connection with the procurement is not an interested party unless there is only one remaining offeror after the concern is found to be other than small.

(2) For competitive 8(a) contracts, the following entities may protest:

(i) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

(ii) The contracting officer; or

(iii) The SBA District Director, or designee, in either the district office serving the geographical area in which the procuring activity is located or the district office that services the apparent successful offeror, or the Director, office of Business Development.

(3) For SBA's Subcontracting Program, the following entities may protest:

(i) The prime contractor;

(ii) The contracting officer;

(iii) Other potential subcontractors;

(iv) The responsible SBA Government Contracting Area Director or the Director, Office of Government Contracting; and

(v) Other interested parties.

(4) For SBA's Small Business Innovation Research (SBIR) Program, the following entities may protest:

(i) A prospective offeror;

(ii) The funding agreement officer;

(iii) The responsible SBA Government Contracting Area Director or the Division Chief, Office of Technology; and

(iv) Other interested parties.

(5) For the Department of Defense's Small Disadvantaged Business (SDB) Program, and any other similar program of another Federal agency, the following entities may file a protest in connection with a particular SDB procurement:

(i) Any offeror for the specific SDB requirement whom the contracting officer has not eliminated for reasons unrelated to size;

(ii) The contracting officer; and

(iii) The responsible SBA Area Director for Government Contracting, the SBA Director, Office of Government Contracting, or the SBA Director, Office of Business Development;

(6) For SBA's HUBZone program, the following entities may protest in connection with a particular HUBZone procurement:

(i) Any concern that submits an offer for a specific HUBZone set-aside procurement that the contracting officer has not eliminated for reasons unrelated to size;

(ii) Any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC;

(iii) The contracting officer; and

(iv) The SBA Director, Office of HUBZone, or designee.

(7) For any unrestricted Government procurement in which a business concern has represented itself as a small business concern, the following entities may protest in connection with a particular procurement:

(i) Any offeror;

(ii) The contracting officer; and

(iii) The responsible SBA Government Contracting Area Director, the Director, Office of Government Contracting, or the Director, Office of Business Development.

(8) For SBA's Service Disabled Veteran-Owned Small Business Concern program, the following entities may protest in connection with a particular service-disabled veteran-owned procurement:

(i) Any concern that submits an offer for a specific service-disabled veteran-owned small business set-aside contract;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director; and

(iv) The Director, Office of Government Contracting, or designee.

(b) *Request for Size Determinations.* (1) For SBA's Financial Assistance Programs, the following entities may request a formal size determination:

(i) The applicant for assistance; and

(ii) The SBA official with authority to take final action on the assistance requested. That official may also request the appropriate Government Contracting Area Office to determine whether affiliation exists between an applicant for financial assistance and one or more other entities for purposes of determining whether the applicant would exceed the loan limit amount imposed by §120.151 of this chapter.

(iii) The SBA Associate Administrator for Investment or designee may request a formal size determination for any purpose relating to the SBIC program (*see* part 107 of this chapter) or the NMVC program (*see* part 108 of this chapter). A formal size determination includes a request to determine whether or not affiliation exists between two or more entities for any purpose relating to the SBIC program.

(2) For SBA's 8(a) BD program:

(i) Concerning initial or continued 8(a) BD eligibility, the following entities may request a formal size determination:

(A) The 8(a) BD applicant concern or Participant; or

(B) The Assistant Administrator of the Division of Program Certification and Eligibility or the Director, Office of Business Development.

(ii) Concerning individual sole source 8(a) contract awards, the following entities may request a formal size determination:

(A) The Participant nominated for award of the particular sole source contract;

(B) The SBA program official with authority to execute the 8(a) contract or, where applicable, the procuring activity contracting officer who has been delegated SBA's 8(a) contract execution functions; or

(C) The SBA District Director in the district office that services the Participant, or the Director, Office of Business Development.

(3) For SBA's Certificate of Competency Program, the following entities may request a formal size determination:

(i) The offeror who has applied for a COC; and

(ii) The responsible SBA Government Contracting Area Director or the Director, Office of Government Contracting.

(4) For SBA's sale or lease of government property, the following entities may request a formal size determination:

(i) The responsible SBA Government Contracting Area Director or the Director, Office of Government Contracting; and

(ii) Authorized officials of other Federal agencies administering a property sales program.

(5) For eligibility to pay reduced patent fees, the following entities may request a formal size determination:

(i) The applicant for the reduced patent fees; and

(ii) The Patent and Trademark Office.

(6) For purposes of determining compliance with small business requirements of another Government agency program not otherwise specified in this section, an official with authority to administer the program involved may request a formal size determination.

(7) In connection with initial or continued eligibility for the Small Disadvantaged Business (SDB) program, the following may request a formal size determination:

(i) The applicant or SDB concern; or

(ii) The Assistant Administrator of the Division of Program Certification and Eligibility or the Director, Office of Business Development.

(8) In connection with initial or continued eligibility for the HUBZone program, the following may request a formal size determination:

(i) The applicant or qualified HUBZone business concern; or

(ii) The Director, Office of HUBZone, or designee.

(9) For purposes of validating that firms listed in the Central Contractor Registration database are small, the Government Contracting Area Director or the Director, Office of Government Contracting may initiate a formal size determination when sufficient information exists that calls into question a firm's small business status. The current date will be used to determine size, and SBA will initiate the process to remove from the database the small business designation of any firm found to be other than small.

[61 FR 3286, Jan. 31, 1996, as amended at 63 FR 31907, June 11, 1998; 63 FR 35739, June 30, 1998; 69 FR 25286, May 5, 2004; 69 FR 29206, May 21, 2004; 69 FR 29420, May 24, 2004; 69 FR 44461, July 26, 2004]

§ 121.1002 Who makes a formal size determination?

The responsible Government Contracting Area Director or designee makes all formal size determinations in response to either a size protest or a request for a formal size determination, with the exception of size determinations for purposes of the Disaster Loan Program, which will be made by the Disaster Area Office Director or designee responsible for the area in which the disaster occurred.

§ 121.1003 Where should a size protest be filed?

A protest involving a government procurement or sale must be filed with the contracting officer for the procurement or sale, who must forward the protest to the SBA Government Contracting Area Office serving the area in which the headquarters of the protested concern is located, regardless of the location of any parent company or affiliates.

§ 121.1004 What time limits apply to size protests?

(a) *Protests by entities other than contracting officers or SBA*—(1) *Non-negotiated procurement or sale.* A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening.

(2) *Negotiated procurement.* A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after the contracting officer has notified the protestor of the identity of the prospective awardee.

(3) *Long-term contracts.* For contracts with durations greater than five years (including options), including all existing long-term contracts, Multiple Award Schedule (MAS) Contracts, Multiple Agency Contracts (MACs), and Government-wide Acquisition Contracts (GWACs):

(i) Protests regarding size certifications made for contracts must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice (including notice received in writing, orally, or via electronic posting) of the identity of the prospective awardee or award.

(ii) Protests regarding size certifications made for an option period must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice (including notice received in writing, orally, or via electronic posting) of the size certification made by the protested concern.

(A) A contracting officer is not required to terminate a contract where a concern is found to be other than small pursuant to a size protest concerning a size certification made for an option period.

(B) [Reserved]

(iii) Protests relating to size certifications made in response to a contracting officer's request for size certifications in connection with an individual order must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice (including notice received in writing, orally, or via electronic posting) of the identity of the prospective awardee or award.

(4) *Electronic notification of award.* Where notification of award is made electronically, such as posting on the Internet under Simplified Acquisition Procedures, a protest must be received by the contracting officer before close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after the electronic posting.

(5) *No notice of award.* Where there is no requirement for written pre-award notice or notice of award, or where the contracting officer has failed to provide written notification of award, the 5-day protest period will commence upon oral notification by the contracting officer or authorized representative or another means (such as public announcements or other oral communications) of the identity of the apparent successful offeror.

(b) *Protests by contracting officers or SBA.* The time limitations in paragraph (a) of this section do not apply to contracting officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (e) of this section. Notwithstanding paragraph (e), for purposes of the SBIR program the contracting officer and SBA may file a protest in anticipation of award.

(c) *Effect of contract award.* A timely filed protest applies to the procurement in question even though a contracting officer awarded the contract prior to receipt of the protest.

(d) *Untimely protests.* A protest received after the allotted time limits must still be forwarded to SBA. SBA will dismiss untimely protests.

(e) *Premature protests.* A protest filed by any party, including the contracting officer, before bid opening or notification to offerors of the selection of the apparent successful offer will be dismissed as premature.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004; 71 FR 66444, Nov. 15, 2006]

§ 121.1005 How must a protest be filed with the contracting officer?

A protest must be delivered to the contracting officer by hand, telegram, mail, facsimile, Federal Express or other overnight delivery service, e-mail, or telephone. If a protest is made by telephone, the contracting officer must later receive a confirming letter either within the 5-day period in § 121.1004(a)(1) or postmarked no later than one day after the date of the telephone protest.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

§ 121.1006 When will a size protest be referred to an SBA Government Contracting Area Office?

(a) A contracting officer who receives a protest (other than from SBA) must forward the protest promptly to the SBA Government Contracting Area Office serving the area in which the headquarters of the offeror is located.

(b) A contracting officer's referral must contain the following information:

(1) The protest and any accompanying materials;

(2) A copy of the self-certification as to size;

(3) Identification of the applicable size standard;

(4) A copy of the solicitation;

(5) Identification of the date of bid opening or notification provided to unsuccessful offerors;

(6) The date on which the protest was received; and

(7) A complete address and point of contact for the protested concern.

§ 121.1007 Must a protest of size status relate to a particular procurement and be specific?

(a) *Particular procurement.* A protest challenging the size of a concern which does not pertain to a particular procurement or sale will not be acted on by SBA.

(b) *A protest must include specific facts.* A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. Some basis for the belief or allegation stated in the protest must be given. A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest. No particular form is prescribed for a protest. Where materials supporting the protest are available, they should be submitted with the protest.

(c) *Non-specific protests will be dismissed.* Protests which do not contain sufficient specificity will be dismissed by SBA. The following are examples of allegation specificity:

Example 1: An allegation that concern X is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation is non-specific.

Example 2: An allegation that concern X is large because it exceeds the 500 employee size standard (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y is sufficiently specific.

Example 3: An allegation that concern X is affiliated with concern Y without setting forth any basis for the allegation is non-specific.

Example 4: An allegation that concern X is affiliated with concern Y because Mr. A is the majority shareholder in both concerns is sufficiently specific.

Example 5: An allegation that concern X has revenues in excess of $5 million (where $5 million is the applicable size standard) without setting forth a basis for the allegation is non-specific.

Example 6: An allegation that concern X exceeds the size standard (where the applicable size standard is $5 million) because it received Government contracts in excess of $5 million last year is sufficiently specific.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

§ 121.1008 What occurs after SBA receives a size protest or request for a formal size determination?

(a) When SBA receives a size protest, the SBA Area Director for Government Contracting, or designee, will notify the contracting officer, the protested concern, and the protestor that the protest has been received. If the protest pertains to a requirement involving SBA's HUBZone program, the Area Director will also notify the D/HUB of the protest. If the protest pertains to a requirement involving SBA's SBIR Program, the Area Director will also notify the Division Chief, Office of Technology. If the protest involves the size status of a concern that SBA has

certified as a small disadvantaged business (SDB) (*see* part 124, subpart B of this chapter) the Area Director will notify SBA's Director, Office of Business Development. If the protest pertains to a requirement that has been reserved for competition among eligible 8(a) BD program participants, the Area Director will notify the SBA district office servicing the 8(a) concern whose size status has been protested. SBA will provide a copy of the protest to the protested concern together with SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to complete the form and respond to the allegations in the protest.

(b) When SBA receives a request for a formal size determination in accord with §121.1001(b), SBA will provide a blank copy of SBA Form 355 to the concern whose size is at issue.

(c) The protested concern or concern whose size is at issue must return the completed SBA Form 355 and all other requested information to SBA within 3 working days from the date of receipt of the blank form from SBA. SBA has discretion to grant an extension of time to file the form. The firm must attach to the completed SBA Form 355 its answers to the allegations contained in the protest, where applicable, together with any supporting material.

(d) If a concern whose size status is at issue fails to submit a completed SBA Form 355, responses to the allegations of the protest, or other requested information within the time allowed by SBA, or if it submits incomplete information, SBA may presume that disclosure of the information required by the form or other missing information would demonstrate that the concern is other than a small business. A concern whose size status is at issue must furnish information about its alleged affiliates to SBA, despite any third party claims of privacy or confidentiality, because SBA will not disclose information obtained in the course of a size determination except as permitted by Federal law.

[61 FR 3286, Jan. 31, 1996, as amended at 63 FR 31908, June 11, 1998; 69 FR 29207, May 21, 2004]

§121.1009 What are the procedures for making the size determination?

(a) *Time frame for making size determination.* After receipt of a protest or a request for a formal size determination, SBA will make a formal size determination within 10 working days, if possible.

(b) *Basis for determination.* The size determination will be based primarily on the information supplied by the protestor or the entity requesting the size determination and that provided by the concern whose size status is at issue. The determination, however, may also be based on grounds not raised in the protest or request for size determination. SBA may use other information and may make requests for additional information to the protestor, the concern whose size status is at issue and any alleged affiliates, or other parties.

(c) *Burden of persuasion.* The concern whose size is under consideration has the burden of establishing its small business size.

(d) *Weight of evidence.* SBA will give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure.

(e) *Formal size determination.* The SBA will base its formal size determination upon the record, including reasonable inferences from the record, and will state in writing the basis for its findings and conclusions.

(f) *Notification of determination.* SBA will promptly notify the contracting officer, the protestor, and the protested offeror, as well as each affiliate or alleged affiliate, of the size determination. The notification will be by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt.

(g) *Results of an SBA Size Determination.* (1) A formal size determination becomes effective immediately and remains in full force and effect unless and until reversed by OHA.

(2) A contracting officer may award a contract based on SBA's formal size determination.

(3) If the formal size determination is appealed to OHA, the OHA decision on appeal will apply to the pending procurement or sale if the decision is received before award. OHA decisions received after contract award will not apply to that procurement or sale, but will have future effect, unless the contracting officer agrees to apply the OHA decision to the procurement or sale.

(4) Once SBA has determined that a concern is other than small for purposes of a particular procurement, the concern cannot later become eligible for the procurement by reducing its size.

(5) A concern determined to be other than small under a particular size standard is ineligible for any procurement or any assistance authorized by the Small Business Act or the Small Business Investment Act of 1958 which requires the same or a lower size standard, unless SBA recertifies the concern to be small pursuant to §121.1010 or OHA reverses the adverse size determination. After an adverse size determination, a concern cannot self-certify as small under the same or lower size standard unless it is first recertified as small by SBA. If a concern does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small on a pending procurement or on an application for SBA assistance, the concern must immediately inform the officials responsible for the pending procurement or requested assistance of the adverse size determination.

(h) Limited reopening of size determinations. In cases where the size determination contains clear administrative error or a clear mistake of fact, SBA may, in its sole discretion, reopen the size determination to correct the error or mistake, provided no appeal has been filed with OHA.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 47245, July 18, 2002; 69 FR 28207, May 21, 2004]

§121.1010 How does a concern become recertified as a small business?

(a) A concern may request SBA to recertify it as small at any time by filing an application for recertification with the Government Contracting Area Office responsible for the area in which the headquarters of the applicant is located, regardless of the location of parent companies or affiliates. No particular form is prescribed for the application; however, the request for recertification must be accompanied by a current completed SBA Form 355 and any other information sufficient to show a significant change in its ownership, management, or other factors bearing on its status as a small concern.

(b) Recertification will not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible manufacturer where the eligible small business bidder or offeror is a nonmanufacturer on a particular Government procurement.

(c) A denial of an application for recertification is a formal size determination and may be reviewed by OHA at the discretion of that office.

(d) The granting of an application for recertification has future effect only. While it is a formal size determination, notice of recertification is required to be given only to the applicant.

APPEALS OF SIZE DETERMINATIONS AND NAICS CODE DESIGNATIONS

§121.1101 Are formal size determinations subject to appeal?

(a) Appeals from formal size determinations may be made to OHA. Unless an appeal is made to OHA, the size determination made by a SBA Government Contracting Area Office or Disaster Area Office is the final decision

of the agency. The procedures for appealing a formal size determination to OHA are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a formal size determination may be sought in a court.

(b) OHA will not review a formal size determination where the contract has been awarded and the issue(s) raised in a petition for review are contract specific, such as compliance with the nonmanufacturer rule (*see* § 121.406(b)), or joint venture or ostensible subcontractor rule (*see* § 121.103(h)).

[69 FR 29207, May 21, 2004]

§ 121.1102 Are NAICS code designations subject to appeal?

A NAICS code designation made by a procuring activity contracting officer may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a NAICS code designation may be sought in a court.

[67 FR 47245, July 18, 2002]

§ 121.1103 What are the procedures for appealing a NAICS code designation?

(a) Any interested party adversely affected by a NAICS code designation may appeal the designation to OHA. The only exception is that, for a sole source contract reserved under SBA's 8(a) Business Development program (*see* part 124 of this chapter), only SBA's Director, Office of Business Development may appeal the NAICS code designation.

(b) The contracting officer's determination of the applicable NAICS code is final unless appealed as follows:

(1) An appeal from a contracting officer's NAICS code designation and applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation. OHA will summarily dismiss an untimely NAICS code appeal.

(2)(i) The appeal petition must be in writing and must be sent to the Office of Hearings & Appeals, U.S. Small Business Administration, 409 3rd Street, SW., Suite 5900, Washington, DC 20416.

(ii) There is no required format for a NAICS code appeal, but an appeal must include the following information: the solicitation or contract number; the name, address, and telephone number of the contracting officer; a full and specific statement as to why the NAICS code designation is erroneous, and argument in support thereof; and the name, address and telephone number of the appellant or its attorney.

(3) The appellant must serve the appeal petition upon the contracting officer who assigned the NAICS code to the acquisition and SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 3rd Street, SW., Washington, DC 20416.

(4) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by notice and order of the date OHA received the appeal, the docket number, and the Judge assigned to the case. The contracting officer's response to the appeal must include argument and supporting evidence (*see* part 134, subpart C, of this chapter) and must be received by OHA within 10 calendar days from the date of the docketing notice and order, unless otherwise specified by the Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must immediately send to OHA a copy of the solicitation relating to the NAICS code appeal.

(5) After close of the record, OHA will issue a decision and inform all interested parties, including the appellant and contracting officer. If OHA's decision is received by the contracting officer before the date offers are due, the solicitation must be amended if the contracting officer's designation of the NAICS code is reversed. If OHA's decision is received by the contracting officer after the due date of initial offers, the decision will not apply to the pending procurement, but will apply to future solicitations for the same products or services.

[69 FR 29207, May 21, 2004]

Subpart B—Other Applicable Provisions

WAIVERS OF THE NONMANUFACTURER RULE FOR CLASSES OF PRODUCTS AND INDIVIDUAL CONTRACTS

§ 121.1201 What is the Nonmanufacturer Rule?

The Nonmanufacturer Rule is set forth in §121.406(b).

§ 121.1202 When will a waiver of the Nonmanufacturer Rule be granted for a class of products?

(a) A waiver for a class of products (class waiver) will be granted when there are no small business manufacturers or processors available to participate in the Federal market for that class of products.

(b) *Federal market* means acquisitions by the Federal Government from offerors located in the United States, or such smaller area as SBA designates if it concludes that the class of products is not supplied on a national basis.

(1) When considering the appropriate market area for a product, SBA presumes that the entire United States is the relevant Federal market, unless it is clearly demonstrated that a class of products cannot be procured on a national basis. This presumption may be particularly difficult to overcome in the case of manufactured products, since such items typically have a market area encompassing the entire United States.

(2) When considering geographic segmentation of a Federal market, SBA will not necessarily use market definitions dependent on airline radius, political, or SBA regional boundaries. Market areas typically follow established transportation routes rather than jurisdictional borders. SBA examines the following factors, among others, in cases where geographic segmentation for a class of products is urged:

(i) Whether perishability affects the area in which the product can practically be sold;

(ii) Whether transportation costs are high as a proportion of the total value of the product so as to limit the economic distribution of the product;

(iii) Whether there are legal barriers to transportation of the item;

(iv) Whether a fixed, well-delineated boundary exists for the purported market area and whether this boundary has been stable over time; and

(v) Whether a small business, not currently selling in the defined market area, could potentially enter the market from another area and supply the market at a reasonable price.

(c) *Available to participate* in the context of the Federal market means that contractors exist that have been awarded or have performed a contract to supply a specific class of products to the Federal Government within 24 months from the date of the request for waiver, either directly or through a dealer, or who have submitted an offer on a solicitation for that class of products within that time frame.

(d) *Class of products* is an individual subdivision within an NAICS Industry Number as established by the Office of Management and Budget in the NAICS Manual.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

§ 121.1203 When will a waiver of the Nonmanufacturer Rule be granted for an individual contract?

An individual waiver for a product in a specific solicitation will be approved when the SBA Director, Office of Government Contracting reviews and accepts a contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of a solicitation, including the period of performance.

§ 121.1204 What are the procedures for requesting and granting waivers?

(a) *Waivers for classes of products.* (1) SBA may, at its own initiative, examine a class of products for possible waiver of the Nonmanufacturer Rule.

(2) Any interested person, business, association, or Federal agency may submit a request for a waiver for a particular class of products. Requests should be addressed or hand-carried to the Director, Office of Government Contracting, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

(3) Requests for a waiver of a class of products need not be in any particular form, but should include a statement of the class of products to be waived, the applicable NAICS code, and detailed information on the efforts made to identify small business manufacturers or processors for the class.

(4) If SBA decides that there are small business manufacturers or processors in the Federal procurement market, it will deny the request for waiver, issue notice of the denial, and provide the names, addresses, and telephone numbers of the sources found. If SBA does not initially confirm the existence of small business manufacturers or processors in the Federal market, it will:

(i) Publish notices in the Commerce Business Daily and the FEDERAL REGISTER seeking information on small business manufacturers or processors, announcing a notice of intent to waive the Nonmanufacturer Rule for that class of products and affording the public a 15-day comment period; and

(ii) If no small business sources are identified, publish a notice in the FEDERAL REGISTER stating that no small business sources were found and that a waiver of the Nonmanufacturer Rule for that class of products has been granted.

(5) An expedited procedure for issuing a class waiver may be used for emergency situations, but only if the contracting officer provides a determination to the Director, Office of Government Contracting that the procurement is proceeding under the authority of FAR §6.302-2 (48 CFR 6.302-2) for "unusual and compelling urgency," or provides a determination materially the same as one of unusual and compelling urgency. Under the expedited procedure, if a small business manufacturer or processor is not identified by a PASS search, the SBA will grant the waiver for the class of products and then publish a notice in the FEDERAL REGISTER. The notice will state that a waiver has been granted, and solicit public comment for future procurements.

(6) The decision by the Director, Office of Government Contracting to grant or deny a waiver is the final decision by the Agency.

(7) A waiver of the Nonmanufacturer Rule for classes of products has no specific time limitation. SBA will, however, periodically review existing class waivers to the Nonmanufacturer Rule to determine if small business manufacturers or processors have become available to participate in the Federal market for the waived classes of products and the waiver should be terminated.

(i) Upon SBA's receipt of evidence that a small business manufacturer or processor exists in the Federal market for a waived class of products, the waiver will be terminated by the Director, Office of Government Contracting. This evidence may be discovered by SBA during a periodic review of existing waivers or may be brought to SBA's attention by other sources.

(ii) SBA will announce its intent to terminate a waiver for a class of products through the publication of a notice in the FEDERAL REGISTER, asking for comments regarding the proposed termination.

(iii) Unless public comment reveals that no small business manufacturer or processor in fact exists for the class of products in question, SBA will publish a final Notice of Termination in the FEDERAL REGISTER.

(b) *Individual waivers for specific solicitations.* (1) A contracting officer's request for a waiver of the Nonmanufacturer Rule for specific solicitations need not be in any particular form, but must, at a minimum, include:

(i) A definitive statement of the specific item to be waived and justification as to why the specific item is required;

(ii) The solicitation number, NAICS code, dollar amount of the procurement, and a brief statement of the procurement history;

(iii) A determination by the contracting officer that there are no known small business manufacturers or processors for the requested items (the determination must contain a narrative statement of the contracting officer's efforts to search for small business manufacturers or processors of the item and the results of those efforts, and a statement by the contracting officer that there are no known small business manufacturers for the items

and that no small business manufacturer or processor can reasonably be expected to offer the required items); and

(iv) For contracts expected to exceed $500,000, a copy of the Statement of Work.

(2) Requests should be addressed to the Director, Office of Government Contracting, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

(3) SBA will examine the contracting officer's determination and any other information it deems necessary to make an informed decision on the individual waiver request. If SBA's research verifies that no small business manufacturers or processors exist for the item, the Director, Office of Government Contracting will grant an individual, one-time waiver. If a small business manufacturer or processor is found for the product in question, the Associate Administrator will deny the request. Either decision represents a final decision by SBA.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

§ 121.1205 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers of the Nonmanufacturer Rule have been granted is maintained in SBA's Web site at *www.sba.gov/GC/approved.html*. A list of such waivers may also be obtained by contacting the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, or the nearest SBA Government Contracting Area Office.

[69 FR 29208, May 21, 2004]

PART 123—DISASTER LOAN PROGRAM

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EXHIBIT L

SECTION 3 OF SMALL BUSINESS ACT 15 U.S.C. SECTION 632

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TITLE 15 - COMMERCE AND TRADE

CHAPTER 14A - AID TO SMALL BUSINESS

-HEAD-

Sec. 632. Small-business concern

-STATUTE-

(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.

(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.

(b) "Agency" defined

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

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

trust as qualified employee trust

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

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

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

(i) which is maintained by such concern, and

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

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

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

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

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

(iv) all qualifying employer securities acquired by such

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

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

(A) the trust is maintained by an employee organization which represents at least 51 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 this chapter, the term "small agricultural cooperative" means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

(k) "Disaster" defined

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

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

(A) drought; and

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

(1) "Computer crime" defined

For purposes of this chapter –

(1) (!1) the term "computer crime" means –

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

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

(m) "Simplified acquisition threshold" defined

For purposes of this chapter, the term "simplified acquisition threshold" has the meaning given such term in section 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;

(D) redesignated areas; or

(E) base closure areas.

(2) HUBZone

The term "HUBZone" means a historically underutilized business zone.

(3) HUBZone small business concern

The term "HUBZone small business concern" means -

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

(B) a small business concern that is –

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

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

(C) a small business concern –

(i) that is wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments; or

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

(D) a small business concern that is –

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

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

(E) a small business concern that is –

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

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

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

(4) Qualified areas

(A) Qualified census tract

The term "qualified census tract" has the meaning given that term in section 42(d)(5)(C)(ii) 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;

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

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

(C) Redesignated area

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

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

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

(D) Base closure area

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

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

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

(iii) section 2687 of title 10; or

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

(5) Qualified HUBZone small business concern

(A) In general

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

(i) the small business concern has certified in writing to

the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures, which shall be established by the Administration by regulation) that -

(I) it is a HUBZone small business concern -

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

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

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

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

(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.

(r) Definitions relating to small business lending companies

As used in section 650 of this title:

(1) Small business lending company

The term "small business lending company" means a business concern that is authorized by the Administrator to make loans pursuant to section 636(a) of this title and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

(2) Non-Federally regulated SBA lender

The term "non-Federally regulated SBA lender" means a business concern if -

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

U.S. Code

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

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

-SOURCE-

(Pub. L. 85-536, Sec. 2[3], July 18, 1958, 72 Stat. 384; Pub. L. 94-305, title I, Sec. 112(b), June 4, 1976, 90 Stat. 667; Pub. L. 95-507, title II, Sec. 224(b), Oct. 24, 1978, 92 Stat. 1772; Pub. L. 96-302, title V, Sec. 504, July 2, 1980, 94 Stat. 851; Pub. L. 96-481, title I, Sec. 108, Oct. 21, 1980, 94 Stat. 2323; Pub. L. 97-35, title XIX, Sec. 1903, Aug. 13, 1981, 95 Stat. 771; Pub. L. 98-270, title III, Sec. 310, Apr. 18, 1984, 98 Stat. 161; Pub. L. 98-362, Sec. 6, July 16, 1984, 98 Stat. 434; Pub. L. 98-473, title I, Sec. 111A(b), Oct. 12, 1984, 98 Stat. 1966; Pub. L. 99-272, title XVIII, Sec. 18016, Apr. 7, 1986, 100 Stat. 371; Pub. L. 99-500, Sec. 101(c) [title X, Sec. 921(f)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-149, and Pub. L. 99-591, Sec. 101(c) [title X, Sec. 921(f)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-149; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-661, div. A, title IX, formerly title IV, Sec. 921(f), Nov. 14, 1986, 100 Stat. 3929, renumbered title IX, Pub. L. 100-26, Sec. 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-26, Sec. 10(b)(2), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100-456, div. A, title VIII, Sec. 845, Sept. 29, 1988, 102 Stat. 2027; Pub. L. 100-590, title I, Sec. 119(b), Nov. 3, 1988, 102 Stat. 2999; Pub. L. 100-656, title VII, Sec. 732, Nov. 15, 1988, 102 Stat. 3897; Pub. L. 101-510, div. A, title VIII, Sec. 806(e)(1), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102-366, title II, Sec. 222(a), Sept. 4, 1992, 106 Stat. 999; Pub. L. 103-355, title IV, Sec. 4404(a), title VII, Sec. 7106(d), Oct. 13, 1994, 108 Stat. 3349, 3376; Pub. L. 103-403, title III, Sec. 301, Oct. 22, 1994, 108 Stat. 4187; Pub. L. 104-208, div. D, title I, Sec. 104(b)(1), Sept. 30, 1996, 110 Stat. 3009-730; Pub. L. 105-135, title IV, Sec. 412, title VI, Sec. 602(a), Dec. 2, 1997, 111

Stat. 2617, 2627; Pub. L. 106-50, title I, Sec. 103(a), title IV, Sec. 401(a), Aug. 17, 1999, 113 Stat. 234, 243; Pub. L. 106-554, Sec. 1(a)(9) [title VI, Secs. 602-604, 611, 612(b)-615(a), title VIII, Sec. 806(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-697 to 2763A-701, 2763A-706; Pub. L. 108-271, Sec. 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108-447, div. K, title I, Secs. 151, 152(a)(1), (3)-(c)(1), 162, Dec. 8, 2004, 118 Stat. 3456, 3457, 3465; Pub. L. 109-59, title X, Sec. 10203, Aug. 10, 2005, 119 Stat. 1933; Pub. L. 109-163, div. A, title VIII, Secs. 844, 845(a)(1), Jan. 6, 2006, 119 Stat. 3389, 3390.)

-REFTEXT-

REFERENCES IN TEXT

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

The Community Economic Development Act of 1981, referred to in subsec. (p)(3)(D)(i), is subchapter A (Secs. 611-633) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 489, as amended. Part 1 of subchapter A of the Act is classified generally to part A (Sec. 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.

-COD-

CODIFICATION

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

definition of "Indian Tribes" is set out in subsec. (e) of section 450b of Title 25.

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

PRIOR PROVISIONS

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

-MISC1-

AMENDMENTS

2006 - Subsec. (a)(4). Pub. L. 109-163, Sec. 844, added par. (4). Subsec. (k). Pub. L. 109-163, Sec. 845(a)(1), designated existing provisions as par. (1) and added par. (2).

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

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

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

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

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

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

Subsec. (p)(4)(B)(ii)(II). Pub. L. 108-447, Sec. 152(b), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "the unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the

Secretary of Labor."

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

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

"(ii) 3 years after"

for "only for the 3-year period following".

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

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

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

2000 - Subsec. (a)(1). Pub. L. 106-554, Sec. 1(a)(9) [title VIII, Sec. 806(b)], substituted "$750,000" for "$500,000".

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

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

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

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

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

"(i) that, based on the most recent data available from the

Bureau of the Census of the Department of Commerce -

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

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

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

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

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

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

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

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

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

substitution for "subclauses (IV) and (V) of subparagraph (A)(i)", to reflect the probable intent of Congress.

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

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

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

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

Subsec. (q). Pub. L. 106-50, Sec. 103(a), added subsec. (q).

1997 - Subsec. (o). Pub. L. 105-135, Sec. 412, added subsec. (o).

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

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

1994 - Subsec. (a)(2). Pub. L. 103-403 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards (by number of employees or dollar volume of business) by which a business concern is to be recognized as a small business concern

for the purposes of this chapter or any other Act. Unless specifically authorized by statute, the Secretary of a department or the head of a Federal agency may not prescribe for the use of such department or agency a size standard for categorizing a business concern as a small business concern, unless such proposed size standard -

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

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

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

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

"(C) is approved by the Administrator."

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

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

1992 - Subsec. (a). Pub. L. 102-366 added pars. (2) and (3) and struck out at end of par. (1) "In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business: Provided, That the Administration shall not promulgate, amend, or rescind any rule [or] regulation with respect to size standards prior to March 31, 1981. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this chapter, the maximum number of employees which a small-business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries

and to take proper account of other relevant factors."

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

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

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

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

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

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

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

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

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

Subsec. (c)(2)(A), (3)(B)(i), (iv). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title

26" thus requiring no change in text.

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 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

Section 104(b)(2) of div. D of Pub. L. 104-208 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective with respect to any disaster occurring on or after March 1, 1994."

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1987 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT; INITIAL REVIEW OF STANDARDS

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

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

"(h) Initial Review of Size Standards. - (1) Paragraph (2) of section 3(a) of the Small Business Act (as added by subsection (f)) [15 U.S.C. 632(a)(2)] shall take effect on the date of the enactment of this Act [Oct. 18, 1986].

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

"(3) If the Administrator of the Small Business Administration determines, on the basis of the review referred to in paragraph (2), that contracts awarded under the set-aside programs under sections 8(a) and 15(a) of the Small Business Act [15 U.S.C. 637(a), 644(a)] in any industry category subject to that review exceed 30 percent of the dollar value of the total contract awards for that industry category, as determined in accordance with the last sentence of section 15(a)(3) of such Act, the Administrator shall propose adjustments to the size standards for such industry category establishing eligibility for a set-aside program to a size that will likely reduce the number of contracts which may be set aside to approximately 30 percent of the dollar value of the contracts to be awarded in that industry category. The Administrator shall publish proposed regulations, including any revised size standards, in the Federal Register by November 30, 1987, or the date of enactment of the National Defense Authorization Act for Fiscal Years 1988 and 1989 [Pub. L. 100-180, Dec. 4, 1987], whichever is later. The proposed regulations shall provide not less than 60 days for public comment. The Administrator shall issue final regulations not later than May 31, 1988.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 312 of title III of Pub. L. 98-270 provided that: "The amendments made by sections 310 and 311 of this title [amending this section and section 636 of this title] shall apply to loans

granted on the basis of any disaster with respect to which a declaration has been issued after September 1, 1982, under section 7(b)(2)(A), (B), or (C) of the Small Business Act [15 U.S.C. 636(b)(2)(A), (B), (C)] or with respect to which a certification has been made after such date under section 7(b)(2)(D) of such Act."

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

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

REGULATIONS

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

Section 605 of title VI of Pub. L. 105-135 provided that:

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

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

Section 222(b) of Pub. L. 102-366 provided that:

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

"(2) Listing of additional size standards. - The regulations required by paragraph (1) shall include a listing of all small business size standards prescribed by statute or by individual Federal departments and agencies, identifying the programs or purposes to which such size standards apply."

HUBZONE STATUS TIME LINE AND COMMENCEMENT

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

CONTINUED EFFECTIVENESS OF NUMERICAL SIZE STANDARDS IN EFFECT ON

SEPTEMBER 30, 1988

The last sentence of section 732 of Pub. L. 100-656 which provided that any numerical size standard that pertained to any of the designated industry groups, and that was in effect on Sept. 30, 1988, was to remain in effect for the duration of the Program, was repealed by Pub. L. 103-160, div. A, title VIII, Sec. 850(1), Nov. 30, 1993, 107 Stat. 1726. See section 717(f) of Pub. L. 100-656, set out as a note under section 644 of this title.

REPORT ON EFFECT OF 1986 AMENDMENTS

Section 101(c) [title X, Sec. 921(i)] of Pub. L. 99-500 and Pub. L. 99-591, and section 921(i) of title IX, formerly title IV, of Pub. L. 99-661; renumbered title IX, Pub. L. 100-26, Sec. 3(5), Apr. 21, 1987, 101 Stat. 273, directed Administrator of the Small Business Administration, not later than July 15, 1987, to submit to Congress a report on the amendments to sections 632, 637, and 644 of this title made by this section which was to include Administrator's views on the advisability and feasibility of implementing such amendments, Administrator's findings and determinations under the review of size standards for businesses that qualify as small businesses carried out pursuant to 15 U.S.C. 632(a)(2)(B), a determination of whether or not the amendments to section 632 of this title would further the interests of the set-aside program, and recommendations for furthering certain interests in a more efficient or effective manner than provided in such amendments.

-FOOTNOTE-

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