

tiple Award Schedule to count those orders toward their 8(a) procurement goals.

**SEC. 7. Bundling Contracts.** To the extent permitted by law, departments and agencies must submit to the SBA for review any contracts that are proposed to be bundled. The determination of the SBA with regard to the appropriateness of bundling in each instance must be carefully reviewed by the department or agency head, or his or her designee, and must be given due consideration. If there is an unresolvable conflict, then the SBA or the department or agency can seek assistance from the OMB.

**SEC. 8. Awards Program.** The Secretary of Commerce and the Administrator of the SBA shall jointly undertake a feasibility study to determine the appropriateness of an awards program for executive departments and agencies who best exemplify the letter and intent of this order in increasing opportunities for 8(a)s, SDBs, and MBEs in Federal procurement. Such study shall be presented to the President within 90 days of the date of this order.

**SEC. 9. Applicability.** Independent agencies are requested to comply with the provisions of this order.

**SEC. 10. Administration, Enforcement, and Judicial Review.**

(a) This order shall be carried out to the extent permitted by law and consistent with the Administration's priorities and appropriations.

(b) This order is not intended and should not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

WILLIAM J. CLINTON.

DELEGATION OF AUTHORITY TO ESTABLISH ANNUAL GOALS FOR PARTICIPATION OF SMALL BUSINESS CONCERNS IN PROCUREMENT CONTRACTS

Memorandum of the President of the United States, June 6, 1990, 55 F.R. 27453-27455, provided:

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States, including section 15(g) of the Small Business Act, as amended [subsec. (g) of this section], and section 301 of Title 3 of the United States Code, I hereby delegate to the Director of the Office of Management and Budget the authority vested in the President to establish the annual goals required by Section 502 of the Business Opportunity Development Reform Act of 1988 (P.L. 100-656) [amending this section].

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

CONTINUED COMMITMENT TO SMALL, SMALL DISADVANTAGED, AND SMALL WOMEN-OWNED BUSINESSES IN FEDERAL PROCUREMENT

Memorandum of President of the United States, Oct. 13, 1994, 59 F.R. 52397, provided:

Memorandum for the Heads of Executive Departments and Agencies [and] the President's Management Council

It is the policy of the Federal Government that a fair proportion of its contracts be placed with small, small disadvantaged, and small women-owned businesses. Such businesses should also have the maximum practicable opportunity to participate as subcontractors in contracts awarded by the Federal Government consistent with efficient contract performance. I am committed to the continuation of this policy. Therefore, I ask that you encourage the use of various tools, including set-asides, price preferences, and section 8(a) of the Small Business Act (15 U.S.C. 637(a)), as necessary to achieve this policy objective.

The Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, see Short Title of 1994 Act note set out under section 101 of Title 41, Public Contracts] author-

izes civilian agencies to utilize set-aside procurements for small disadvantaged businesses. The Act also, for the first time, establishes goals for contracting with small women-owned businesses. These provisions, along with others in the Act, will provide greater access to Federal Government business opportunities for small, small disadvantaged, and small women-owned businesses. Department and agency heads should ensure that efforts to streamline acquisition procedures encourage the participation of these businesses in Federal procurements.

This memorandum shall be published in the Federal Register.

WILLIAM J. CLINTON.

§ 645. Offenses and penalties

(a) False statements; overvaluation of securities

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the purpose of obtaining money, property, or anything of value, under this chapter, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both.

(b) Embezzlement, etc.

Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

(c) Concealment, etc.

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Administration, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

**(d) Misrepresentation, etc.**

(1) Whoever misrepresents the status of any concern or person as a “small business concern”, a “qualified HUBZone small business concern”, a “small business concern owned and controlled by socially and economically disadvantaged individuals”, or a “small business concern owned and controlled by women”, in order to obtain for oneself or another any—

(A) prime contract to be awarded pursuant to section 638, 644, or 657a of this title;

(B) subcontract to be awarded pursuant to section 637(a) of this title;

(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 637(d) of this title; or

(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 637(d) of this title for a definition of program eligibility,<sup>1</sup> shall be subject to the penalties and remedies described in paragraph (2).

(2) Any person who violates paragraph (1) shall—

(A) be punished by a fine of not more than \$500,000 or by imprisonment for not more than 10 years, or both;

(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812);

(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract; and

(D) be ineligible for participation in any program or activity conducted under the authority of this chapter or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

**(e) Representations under subsection (d) of this section to be in writing**

Any representation of the status of any concern or person as a “small business concern”, a “HUBZone small business concern”, a “small business concern owned and controlled by socially and economically disadvantaged individuals”, or a “small business concern owned and controlled by women” in order to obtain any prime contract or subcontract enumerated in subsection (d) of this section shall be in writing.

**(f) Misrepresentation of compliance with section 636(j)(10)(I)**

Whoever falsely certifies past compliance with the requirements of section 636(j)(10)(I) of this title shall be subject to the penalties prescribed in subsection (d) of this section.

(Pub. L. 85–536, §2[16], July 18, 1958, 72 Stat. 395; Pub. L. 88–264, §2, Feb. 5, 1964, 78 Stat. 8; Pub. L. 99–272, title XVIII, §18009, Apr. 7, 1986, 100 Stat.

368; Pub. L. 100–656, title IV, §405, Nov. 15, 1988, 102 Stat. 3875; Pub. L. 103–355, title VII, §7106(c), Oct. 13, 1994, 108 Stat. 3376; Pub. L. 105–85, div. A, title X, §1073(g)(4), Nov. 18, 1997, 111 Stat. 1906; Pub. L. 105–135, title VI, §603(c), Dec. 2, 1997, 111 Stat. 2632.)

## REFERENCES IN TEXT

The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812), referred to in subsec. (d)(2)(B), is subtitle B of title VI of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1934, as amended, which is classified generally to chapter 38 (§3801 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 31 and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (d)(2)(D), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

## PRIOR PROVISIONS

Prior similar provisions were contained in section 209 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, which was previously classified to section 638 of this title. The provisions of section 216 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85–536, which was classified to section 637(c) of this title prior to repeal by Pub. L. 102–191. See section 656 of this title.

## AMENDMENTS

1997—Subsec. (d)(1). Pub. L. 105–135, §603(c)(1)(A), inserted “, a ‘qualified HUBZone small business concern’,” after “‘small business concern’”.

Pub. L. 105–85 substituted “concern owned and controlled by women” for “concerns owned and controlled by women”.

Subsec. (d)(1)(A). Pub. L. 105–135, §603(c)(1)(B), substituted “section 638, 644, or 657a” for “section 638 or 644”.

Subsec. (e). Pub. L. 105–135, §603(c)(2), inserted “, a ‘HUBZone small business concern’,” after “‘small business concern’”.

Pub. L. 105–85 substituted “concern owned and controlled by women” for “concerns owned and controlled by women”.

1994—Subsec. (d)(1). Pub. L. 103–355, §7106(c)(1), substituted “, a ‘small business concern owned and controlled by socially and economically disadvantaged individuals’, or a ‘small business concern owned and controlled by women’” for “‘or ‘small business concern owned and controlled by socially and economically disadvantaged individuals’”.

Subsec. (e). Pub. L. 103–355, §7106(c)(2), substituted “, a ‘small business concern owned and controlled by socially and economically disadvantaged individuals’, or a ‘small business concern owned and controlled by women’” for “‘or ‘small business concern owned and controlled by socially and economically disadvantaged individuals’”.

1988—Subsec. (d). Pub. L. 100–656, §405(a), amended subsec. (d) generally, designating existing provisions as par. (1), redesignating former pars. (1) to (4) as subpars. (A) to (D), respectively, and in subpar. (D), substituting “subject to the penalties and remedies described in paragraph (2)” for “punished by a fine of not more than \$50,000 or by imprisonment for not more than five years, or both”, and adding par. (2).

Subsec. (f). Pub. L. 100–656, §405(b), added subsec. (f). 1986—Subsecs. (d), (e). Pub. L. 99–272 added subsecs. (d) and (e).

1964—Subsec. (c). Pub. L. 88–264 added subsec. (c).

## 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.

<sup>1</sup> So in original. Following provision probably should be set flush with par. (1).

## EFFECTIVE DATE OF 1994 AMENDMENT

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

**§ 646. Liens**

Any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

(Pub. L. 85-536, §2[17], July 18, 1958, 72 Stat. 396.)

## PRIOR PROVISIONS

Section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, was previously classified to this section. See section 640 of this title, and Codification note set out under section 631 of this title.

**§ 647. Duplication of activities of other Federal departments or agencies****(a) General prohibition; exception**

The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government,<sup>1</sup> and nothing contained in this chapter shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this chapter. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

**(b) Definitions**

As used in this chapter—

(1) "agricultural enterprises" means those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and

(2) "credit elsewhere" means the availability of sufficient credit from non-Federal sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time.

(Pub. L. 85-536, §2[18], July 18, 1958, 72 Stat. 396; Pub. L. 93-386, §5, Aug. 23, 1974, 88 Stat. 746; Pub. L. 94-305, title I, §112(e), June 4, 1976, 90 Stat. 667; Pub. L. 96-38, title I, §101(c), July 25, 1979, 93 Stat. 119; Pub. L. 96-302, title I, §119(c), July 2, 1980, 94 Stat. 841; Pub. L. 98-270, title III, §303, Apr. 18, 1984, 98 Stat. 160; Pub. L. 98-369, div. B, title IV, §2401, July 18, 1984, 98 Stat. 1116; Pub. L. 99-272, title XVIII, §18006(a)(3), Apr. 7, 1986, 100 Stat. 366.)

## PRIOR PROVISIONS

Prior similar provisions were contained in section 225, of act July 30, 1953, ch. 282, as added by act Aug. 9,

<sup>1</sup> So in original.

1955, ch. 628, §14, 69 Stat. 551, which was previously classified to section 651 of this title. The provisions of section 218 of act July 30, 1953, formerly classified to this section, were transferred to section 2[12] of Pub. L. 85-536, and are classified to section 641 of this title. See Codification note set out under section 631 of this title.

## AMENDMENTS

1986—Subsec. (a). Pub. L. 99-272 struck out agricultural enterprises exception and proviso that, prior to Oct. 1, 1987, an agricultural enterprise not be eligible for loan assistance under section 636(b)(1) of this title to repair or replace property other than residences and/or personal property unless it is declined for, or would be declined for, emergency loan assistance at substantially similar interest rates from the Farmers Home Administration under subchapter III of the Consolidated Farm and Rural Development Act.

1984—Subsec. (a). Pub. L. 98-369 substituted "October 1, 1987" for "October 1, 1986".

Pub. L. 98-270 substituted "October 1, 1986" for "October 1, 1983".

1980—Subsec. (a). Pub. L. 96-302, §119(c)(1), inserted proviso relating to eligibility for loan assistance prior to October 1, 1983.

Subsec. (b). Pub. L. 96-302, §119(c)(2), added par. (1) and designated as par. (2) existing definition of "credit elsewhere".

1979—Pub. L. 96-38 designated existing provisions as subsec. (a) and added subsec. (b).

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

1974—Pub. L. 93-386 inserted provision authorizing the refusal of loan applications and the denial of loans, for purposes of this section, to be deemed nonduplication of activities.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-270 effective Oct. 1, 1983, see section 313 of Pub. L. 98-270, set out as a note under section 632 of this title.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-302 inapplicable to disasters commencing on or before Oct. 1, 1980, see section 119(d) of Pub. L. 96-302, set out as a note under section 636 of this title.

## PROGRAMS ADMINISTERED BY THE DEPARTMENT OF COMMERCE

Pub. L. 95-507, §207, Oct. 24, 1978, 92 Stat. 1767, provided that: "Nothing in this chapter [meaning chapter 1 of title II of Pub. L. 95-507, consisting of sections 201-206 of Pub. L. 95-507 which amended sections 631, 633, 636, and 637 of this title] is intended to duplicate or limit any programs or projects administered by the Department of Commerce."

**§ 648. Small business development center program authorization****(a) Grants, contracts and cooperative agreements for establishment of small business development centers and for small business activities and purposes; role of Administration; non-Federal additional amount; amount of grant; eligibility**

(1) The Administration is authorized to make grants (including contracts and cooperative agreements) to any State government or any agency thereof, any regional entity, any State-chartered development, credit or finance corporation, any women's business center operating pursuant to section 656 of this title, any public or private institution of higher education, in-