

recurring review of such program and to avoid emergency appeals for additional authorization. Compliance by the Small Business Administration with the foregoing policy will enable the Congress on and after July 25, 1962, to provide additional authorization for such program on a two-year basis.

(Pub. L. 87-550, §1(b), July 25, 1962, 76 Stat. 221.)

#### CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

### § 640. Voluntary agreements among small-business concerns

#### (a) Consultation with President

The President is authorized to consult with representatives of small-business concerns with a view to encouraging the making by such persons with the approval of the President of voluntary agreements and programs to further the objectives of this chapter.

#### (b) Exemption from certain laws; findings and requests; filing and publication

No act or omission to act pursuant to this chapter which occurs while this chapter is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) of this section and found by the President to be in the public interest as contributing to the national defense, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act [15 U.S.C. 41 et seq.] of the United States. A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

#### (c) Delegation of authority; consultation; approval of requests

The authority granted in subsection (b) of this section shall be delegated only (1) to an official who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, (2) upon the condition that such official consult with the Attorney General and the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such official obtain the approval of the Attorney General to any request thereunder before making the request.

#### (d) Inapplicability of section when request or finding withdrawn

Upon withdrawal of any request or finding hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act, or omission to act, by reason of such finding or request.

(Pub. L. 85-536, §2[11], July 18, 1958, 72 Stat. 394.)

#### REFERENCES IN TEXT

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

#### PRIOR PROVISIONS

Prior similar provisions were contained in section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 646 of this title. The provisions of section 211 of act July 30, 1953, formerly classified to this section, were transferred to section 2[10] of Pub. L. 85-536, and are classified to section 639(d), (f) of this title. See Codification note set out under section 631 of this title.

#### EX. ORD. NO. 10493. DELEGATION OF FUNCTIONS

Ex. Ord. No. 10493, Oct. 14, 1953, 18 F.R. 6583, provided: SECTION 1. The functions conferred upon the President by section 217 of the Small Business Act of 1953 [covered by this section] are hereby delegated to the Administrator of the Small Business Administration and shall be carried out as provided in the said section 217.

SEC. 2. There is hereby delegated to the Administrator of the Small Business Administration so much of the functions conferred upon the President by section 708 of the Defense Production Act of 1950, as amended [50 U.S.C. 4558], as necessary to effect changes in the composition of, or to take other action respecting voluntary agreements and programs relating to, small-business production pools approved prior to July 31, 1953, pursuant to the said section 708 [50 U.S.C. 4558]: *Provided*, That this section shall not be construed as limiting the authority of the Director of the Office of Defense Mobilization under Executive Order No. 10480 of August 14, 1953 (18 F.R. 4939) [formerly set out as a note under section 2153 of the former Appendix to Title 50]. The functions delegated to the Administrator by this section shall be carried out as provided in section 708 of the Defense Production Act of 1950, as amended [50 U.S.C. 4558].

SEC. 3. Without prejudice to any action taken thereunder, Executive Order No. 10370 of July 7, 1952 (17 F.R. 6141), is hereby revoked.

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### § 641. Transfer to Administration of other functions, powers, and duties

The President may transfer to the Administration any functions, powers, and duties of any department or agency which relate primarily to small-business problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

(Pub. L. 85-536, §2[12], July 18, 1958, 72 Stat. 394.)

#### PRIOR PROVISIONS

Prior similar provisions were contained in section 218 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, as amended by act Aug. 9, 1955, ch. 628, §12, 69 Stat. 551, which was previously classified to section 647 of this title. The provisions of section 212 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85-536, and are classified to section 637(b) of this title. See Codification note set out under section 631 of this title.

#### EXECUTIVE ORDER NO. 10504

Ex. Ord. No. 10504, Dec. 1, 1953, 18 F.R. 7667, which provided for the transfer of functions of the Small Defense

Plants Administration to the Small Business Administrator, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 11871

Ex. Ord. No. 11871, July 18, 1975, 40 F.R. 30915, which transferred the functions of ACTION Agency relating to the Service Corps of Retired Executives and Active Corps of Executives to the Small Business Administration, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

**§ 642. Requirements for loans**

No loan shall be made or equipment, facilities, or services furnished by the Administration under this chapter to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort, and the fees paid or to be paid to any such persons; (2) execute an agreement binding any such business enterprise for a period of two years after any assistance is rendered by the Administration to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administration shall have determined involve discretion with respect to the granting of assistance under this chapter; and (3) furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

(Pub. L. 85-536, §2[13], July 18, 1958, 72 Stat. 394.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 219 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 648 of this title. The provisions of section 213 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85-536, and are classified to section 637(b)(6), (7) of this title. See Codification note set out under section 631 of this title.

**§ 643. Fair charge for use of Government-owned property**

To the fullest extent the Administration deems practicable, it shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administration.

(Pub. L. 85-536, §2[14], July 18, 1958, 72 Stat. 395.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 220 of act July 30, 1953, ch. 282, title II, 67 Stat. 240, which was previously classified to section 649 of this title. The provisions of section 214 of act July 30, 1953, formerly classified to this section, were transferred to section 2[15] of Pub. L. 85-536, and are classified to section 644 of this title. See Codification note set out under section 631 of this title.

**§ 644. Awards or contracts**

**(a) Small business procurements**

**(1) In general**

For purposes of this chapter, small business concerns shall receive any award or contract if such award or contract is, in the determination of the Administrator and the contracting agency, in the interest of—

- (A) maintaining or mobilizing the full productive capacity of the United States;
- (B) war or national defense programs; or
- (C) assuring that a fair proportion of the total purchases and contracts for goods and services of the Government in each industry category (as defined under paragraph (2)) are awarded to small business concerns.

**(2) Industry category defined**

**(A) In general**

In this subsection, the term “industry category” means a discrete group of similar goods and services, as determined by the Administrator in accordance with the North American Industry Classification System codes used to establish small business size standards, except that the Administrator shall limit an industry category to a greater extent than provided under the North American Industry Classification System codes if the Administrator receives evidence indicating that further segmentation of the industry category is warranted—

- (i) due to special capital equipment needs;
- (ii) due to special labor requirements;
- (iii) due to special geographic requirements, except as provided in subparagraph (B);
- (iv) due to unique Federal buying patterns or requirements; or
- (v) to recognize a new industry.

**(B) Exception for geographic requirements**

The Administrator may not further segment an industry category based on geographic requirements unless—

- (i) the Government typically designates the geographic area where work for contracts for goods or services is to be performed;
- (ii) Government purchases comprise the major portion of the entire domestic market for such goods or services; and
- (iii) it is unreasonable to expect competition from business concerns located outside of the general geographic area due to the fixed location of facilities, high mobilization costs, or similar economic factors.

**(3) Determinations with respect to awards or contracts**

Determinations made pursuant to paragraph (1) may be made for individual awards or contracts, any part of an award or contract or task order, or for classes of awards or contracts or task orders.