

Subsec. (c)(2). Pub. L. 112–95, §139(2), substituted “Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)) owned and controlled by disabled veterans” for “Vietnam-era veterans and disabled veterans”.

2002—Subsec. (b). Pub. L. 107–217 substituted “sections 3141–3144, 3146, and 3147 of title 40” for “the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a–276a–5)”.

Statutory Notes and Related Subsidiaries

PRIORITY REVIEW OF CONSTRUCTION PROJECTS IN COLD WEATHER STATES

Pub. L. 115–254, div. B, title I, §156(a), (b), Oct. 5, 2018, 132 Stat. 3217, 3218, provided that:

“(a) IN GENERAL.—The Administrator of the Federal Aviation Administration, to the extent practicable, shall schedule the Administrator’s review of construction projects so that projects to be carried out in the States in which the weather during a typical calendar year prevents major construction projects from being carried out before May 1 are reviewed as early as possible.

“(b) BRIEFING.—The Administrator shall provide a briefing to the appropriate committees of Congress [Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives] annually on the effectiveness of the review and prioritization.”

Pub. L. 112–95, title I, §154, Feb. 14, 2012, 126 Stat. 35, which provided that the Administrator of the Federal Aviation Administration review as early as possible construction projects in States in which the weather prevents major projects from being carried out before May 1, was repealed by Pub. L. 115–254, div. B, title I, §156(c), Oct. 5, 2018, 132 Stat. 3218.

§ 47113. Minority and disadvantaged business participation

(a) DEFINITIONS.—In this section—

(1) “small business concern”—

(A) has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632); but

(B) in the case of a concern in the construction industry, a concern shall be considered a small business concern if the concern meets the size standard for the North American Industry Classification System Code 237310, as adjusted by the Small Business Administration;

(2) “socially and economically disadvantaged individual” has the same meaning given that term in section 8(d) of the Act (15 U.S.C. 637(d)) and relevant subcontracting regulations prescribed under section 8(d), except that women are presumed to be socially and economically disadvantaged; and

(3) the term “qualified HUBZone small business concern” has the meaning given that term in section 31(b) of the Small Business Act.

(b) GENERAL REQUIREMENT.—Except to the extent the Secretary decides otherwise, at least 10 percent of amounts available in a fiscal year under section 48103 of this title shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals or qualified HUBZone small business concerns.

(c) UNIFORM CRITERIA.—The Secretary shall establish minimum uniform criteria for State gov-

ernments and airport sponsors to use in certifying whether a small business concern qualifies under this section. The criteria shall include on-site visits, personal interviews, licenses, analyses of stock ownership and bonding capacity, listings of equipment and work completed, resumes of principal owners, financial capacity, and type of work preferred.

(d) SURVEYS AND LISTS.—Each State or airport sponsor annually shall survey and compile a list of small business concerns referred to in subsection (b) of this section and the location of each concern in the State.

(e) MANDATORY TRAINING PROGRAM.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall establish a mandatory training program for persons described in paragraph (3) to provide streamlined training on certifying whether a small business concern qualifies as a small business concern owned and controlled by socially and economically disadvantaged individuals under this section and section 47107(e).

(2) IMPLEMENTATION.—The training program may be implemented by one or more private entities approved by the Secretary.

(3) PARTICIPANTS.—A person referred to in paragraph (1) is an official or agent of an airport sponsor—

(A) who is required to provide a written assurance under this section or section 47107(e) that the airport owner or operator will meet the percentage goal of subsection (b) of this section or section 47107(e)(1), as the case may be; or

(B) who is responsible for determining whether or not a small business concern qualifies as a small business concern owned and controlled by socially and economically disadvantaged individuals under this section or section 47107(e).

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1268; Pub. L. 103–429, §6(65), Oct. 31, 1994, 108 Stat. 4386; Pub. L. 105–135, title VI, §604(h)(2), Dec. 2, 1997, 111 Stat. 2635; Pub. L. 112–95, title I, §140(b), Feb. 14, 2012, 126 Stat. 27; Pub. L. 115–91, div. A, title XVII, §1701(a)(4)(G)(ii), Dec. 12, 2017, 131 Stat. 1796; Pub. L. 115–254, div. B, title I, §150, title V, §539(o), Oct. 5, 2018, 132 Stat. 3215, 3371.)

HISTORICAL AND REVISION NOTES PUB. L. 103–272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
47113(a)	49 App.:2204(d)(2).	Sept. 3, 1982, Pub. L. 97–248, 96 Stat. 324, §505(d); added Dec. 30, 1987, Pub. L. 100–223, §105(f), 101 Stat. 1493; Oct. 31, 1992, Pub. L. 102–581, §117(c), 106 Stat. 4883.
47113(b)	49 App.:2204(d)(1).	
47113(c)	49 App.:2204(d)(4).	
47113(d)	49 App.:2204(d)(3).	

In subsection (a)(1)(B), the words “or individuals” are omitted because of 1:1.

In subsection (a)(2), the reference is to section 8(c) of the Act because 15:637(d) was redesignated as 15:637(c) by section 3 of the Women’s Business Development Act of 1991 (Public Law 102–191, 105 Stat. 1591).

In subsection (b), the words “beginning after September 30, 1987” are omitted as obsolete.

PUB. L. 103-429

This amends 49:47113(a)(2) to correct erroneous cross-references.

Editorial Notes

REFERENCES IN TEXT

Section 31(b) of the Small Business Act, referred to in subsec. (a)(3), is classified to section 657a(b) of Title 15, Commerce and Trade.

The date of enactment of this subsection, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 112-95, which was approved Feb. 14, 2012.

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115-254, §150, amended par. (1) generally. Prior to amendment, par. (1) read as follows: “‘small business concern’—

“(A) has the same meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632); but

“(B) does not include a concern, or group of concerns controlled by the same socially and economically disadvantaged individual, that has average annual gross receipts over the prior 3 fiscal years of more than \$16,015,000, as adjusted by the Secretary of Transportation for inflation;”.

Subsec. (a)(3). Pub. L. 115-254, §539(o), substituted “(15 U.S.C. 632(p))” for “(15 U.S.C. 632(o))”.

2017—Subsec. (a)(3). Pub. L. 115-91 substituted “section 31(b) of the Small Business Act” for “section 3(p) of the Small Business Act (15 U.S.C. 632(o))”.

2012—Subsec. (e). Pub. L. 112-95 added subsec. (e).

1997—Subsec. (a). Pub. L. 105-135, §604(h)(2)(A), substituted semicolon for period at end of par. (1), substituted “; and” for period at end of par. (2), and added par. (3).

Subsec. (b). Pub. L. 105-135, §604(h)(2)(B), inserted “or qualified HUBZone small business concerns” before period at end.

1994—Subsec. (a)(2). Pub. L. 103-429 substituted “8(d)” for “8(c)” in two places and “637(d)” for “637(c)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-91 effective Jan. 1, 2020, see section 1701(j) of Pub. L. 115-91, set out as a note under section 657a of Title 15, Commerce and Trade.

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 Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Pub. L. 115-254, div. B, title I, §157, Oct. 5, 2018, 132 Stat. 3218, provided that:

“(a) FINDINGS.—Congress finds the following:

“(1) While significant progress has occurred due to the establishment of the airport disadvantaged business enterprise program (sections 47107(e) and 47113 of title 49, United States Code), discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in airport-related markets across the Nation. These continuing barriers merit the continuation of the airport disadvantaged business enterprise program.

“(2) Congress has received and reviewed testimony and documentation of race and gender discrimination from numerous sources, including congressional hearings and roundtables, scientific reports, reports

issued by public and private agencies, news stories, reports of discrimination by organizations and individuals, and discrimination lawsuits. This testimony and documentation shows that race- and gender-neutral efforts alone are insufficient to address the problem.

“(3) This testimony and documentation demonstrates that discrimination across the Nation poses a barrier to full and fair participation in airport-related businesses of women business owners and minority business owners in the racial groups detailed in parts 23 and 26 of title 49, Code of Federal Regulations, and has impacted firm development and many aspects of airport-related business in the public and private markets.

“(4) This testimony and documentation provides a strong basis that there is a compelling need for the continuation of the airport disadvantaged business enterprise program and the airport concessions disadvantaged business enterprise program to address race and gender discrimination in airport-related business.

“(b) PROMPT PAYMENTS.—

“(1) REPORTING OF COMPLAINTS.—Not later than 120 days after the date of enactment of this Act [Oct. 5, 2018], the Administrator of the Federal Aviation Administration shall ensure that each airport that participates in the Program tracks, and reports to the Administrator, the number of covered complaints made in relation to activities at that airport.

“(2) IMPROVING COMPLIANCE.—

“(A) IN GENERAL.—The Administrator shall take actions to assess and improve compliance with prompt payment requirements under part 26 of title 49, Code of Federal Regulations.

“(B) CONTENTS OF ASSESSMENT.—In carrying out subparagraph (A), the Administrator shall assess—

“(i) whether requirements relating to the inclusion of prompt payment language in contracts are being satisfied;

“(ii) whether and how airports are enforcing prompt payment requirements;

“(iii) the processes by which covered complaints are received and resolved by airports;

“(iv) whether improvements need to be made to—

“(I) better track covered complaints received by airports; and

“(II) assist the resolution of covered complaints in a timely manner;

“(v) whether changes to prime contractor specifications need to be made to ensure prompt payments to subcontractors; and,

“(vi) whether changes to prime contractor specifications need to be made to ensure prompt payment of retainage to subcontractors.

“(C) REPORTING.—The Administrator shall make available to the public on an appropriate website operated by the Administrator a report describing the results of the assessment completed under this paragraph, including a plan to respond to such results.

“(3) DEFINITIONS.—In this subsection, the following definitions apply:

“(A) COVERED COMPLAINT.—The term ‘covered complaint’ means a complaint relating to an alleged failure to satisfy a prompt payment requirement under part 26 of title 49, Code of Federal Regulations.

“(B) PROGRAM.—The term ‘Program’ means the airport disadvantaged business enterprise program referenced in subsection (a)(1) [probably means section 140(a)(1)] of the FAA Modernization and Reform Act of 2012 [Pub. L. 112-95] (49 U.S.C. 47113 note).”

Pub. L. 112-95, title I, §140(a), Feb. 14, 2012, 126 Stat. 27, provided that: “Congress finds the following:

“(1) While significant progress has occurred due to the establishment of the airport disadvantaged business enterprise program (49 U.S.C. 47107(e) and 47113),

discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in airport-related markets across the Nation. These continuing barriers merit the continuation of the airport disadvantaged business enterprise program.

“(2) Congress has received and reviewed testimony and documentation of race and gender discrimination from numerous sources, including congressional hearings and roundtables, scientific reports, reports issued by public and private agencies, news stories, reports of discrimination by organizations and individuals, and discrimination lawsuits. This testimony and documentation shows that race- and gender-neutral efforts alone are insufficient to address the problem.

“(3) This testimony and documentation demonstrates that discrimination across the Nation poses a barrier to full and fair participation in airport-related businesses of women business owners and minority business owners in the racial groups detailed in parts 23 and 26 of title 49, Code of Federal Regulations, and has impacted firm development and many aspects of airport-related business in the public and private markets.

“(4) This testimony and documentation provides a strong basis that there is a compelling need for the continuation of the airport disadvantaged business enterprise program and the airport concessions disadvantaged business enterprise program to address race and gender discrimination in airport-related business.”

§ 47114. Apportionments

(a) DEFINITION.—In this section, “amount subject to apportionment” means the amount newly made available under section 48103 of this title for a fiscal year.

(b) APPORTIONMENT DATE.—On the first day of each fiscal year, the Secretary of Transportation shall apportion the amount subject to apportionment for that fiscal year as provided in this section.

(c) AMOUNTS APPORTIONED TO SPONSORS.—

(1) PRIMARY AIRPORTS.—

(A) APPORTIONMENT.—The Secretary shall apportion to the sponsor of each primary airport for each fiscal year an amount equal to—

(i) \$7.80 for each of the first 50,000 passenger boardings at the airport during the prior calendar year;

(ii) \$5.20 for each of the next 50,000 passenger boardings at the airport during the prior calendar year;

(iii) \$2.60 for each of the next 400,000 passenger boardings at the airport during the prior calendar year;

(iv) \$.65 for each of the next 500,000 passenger boardings at the airport during the prior calendar year; and

(v) \$.50 for each additional passenger boarding at the airport during the prior calendar year.

(B) MINIMUM AND MAXIMUM APPORTIONMENTS.—Not less than \$650,000 nor more than \$22,000,000 may be apportioned under subparagraph (A) of this paragraph to an airport sponsor for a primary airport for each fiscal year.

(C) SPECIAL RULE.—In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more—

(i) the amount to be apportioned to a sponsor under subparagraph (A) shall be

increased by doubling the amount that would otherwise be apportioned;

(ii) the minimum apportionment to a sponsor under subparagraph (B) shall be \$1,000,000 rather than \$650,000; and

(iii) the maximum apportionment to a sponsor under subparagraph (B) shall be \$26,000,000 rather than \$22,000,000.

(D) NEW AIRPORTS.—Notwithstanding subparagraph (A), the Secretary shall apportion on the first day of the first fiscal year following the official opening of a new airport with scheduled passenger air transportation an amount equal to the minimum amount set forth in subparagraph (B) or (C), as appropriate, to the sponsor of such airport.

(E) USE OF PREVIOUS FISCAL YEAR’S APPORTIONMENT.—Notwithstanding subparagraph (A), the Secretary may apportion to an airport sponsor in a fiscal year an amount equal to the amount apportioned to that sponsor in the previous fiscal year if the Secretary finds that—

(i) passenger boardings at the airport fell below 10,000 in the calendar year used to calculate the apportionment;

(ii) the airport had at least 10,000 passenger boardings in the calendar year prior to the calendar year used to calculate apportionments to airport sponsors in a fiscal year; and

(iii) the cause of the shortfall in passenger boardings was a temporary but significant interruption in service by an air carrier to that airport due to an employment action, natural disaster, or other event unrelated to the demand for air transportation at the affected airport.

(F) SPECIAL RULE FOR FISCAL YEARS 2018 THROUGH 2020.—Notwithstanding subparagraph (A) and subject to subparagraph (G), the Secretary shall apportion to a sponsor of an airport under that subparagraph¹ for each of fiscal years 2018 through 2020 an amount based on the number of passenger boardings at the airport during calendar year 2012 if the airport—

(i) had 10,000 or more passenger boardings during calendar year 2012;

(ii) had fewer than 10,000 passenger boardings during the calendar year used to calculate the apportionment for fiscal year 2018, 2019, or 2020, as applicable, under subparagraph (A); and

(iii) had scheduled air service at any point in the calendar year used to calculate the apportionment.

(G) LIMITATIONS AND WAIVERS.—The authority to make apportionments in the manner prescribed in subparagraph (F) may be utilized no more than 3 years in a row. The Secretary may waive this limitation if the Secretary determines that an airport’s enplanements are substantially close to 10,000 enplanements and the airport sponsor or affected communities are taking reasonable steps to restore enplanements above 10,000.

¹ So in original. Probably means “subparagraph (A)”.