

112TH CONGRESS  
1ST SESSION

# S. 1590

To require the Administrator of the Small Business Administration to develop a new classification system for small business size determinations and to promulgate rules to eliminate the nonmanufacturer exception to small business size determinations, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2011

Mrs. McCASKILL introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

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## A BILL

To require the Administrator of the Small Business Administration to develop a new classification system for small business size determinations and to promulgate rules to eliminate the nonmanufacturer exception to small business size determinations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness for Small  
5 Businesses in Federal Contracting Act of 2011”.

1 **SEC. 2. NEW CLASSIFICATION SYSTEM FOR SMALL BUSI-**  
2 **NESS SIZE DETERMINATIONS.**

3 (a) IN GENERAL.—Section 3(a)(2) of the Small Busi-  
4 ness Act (15 U.S.C. 632(a)(2)) is amended by adding at  
5 the end the following:

6 “(D) REVISION OF CLASSIFICATION.—

7 “(i) IN GENERAL.—Not later than  
8 180 days after the date of enactment of  
9 the Fairness for Small Businesses in Fed-  
10 eral Contracting Act of 2011, and in con-  
11 sultation with the Federal Acquisition Reg-  
12 ulatory Council, the Administrator shall es-  
13 tablish a classification system for indus-  
14 tries for purposes of determining whether  
15 business concerns meet the size standards  
16 established under this paragraph that re-  
17 places the North American Industrial Clas-  
18 sification System.

19 “(ii) AMENDMENT OF FAR.—The Fed-  
20 eral Acquisition Regulatory Council shall  
21 amend the Federal Acquisition Regulation  
22 as appropriate to integrate the classifica-  
23 tion system established under clause (i).

24 “(iii) INTEGRATION OF SYSTEM.—The  
25 Administrator of General Services shall in-  
26 tegrate the classification system estab-

1 lished under clause (i) into the Integrated  
2 Acquisition Environment.

3 “(iv) CRITERIA.—The classification  
4 system established under clause (i) shall—

5 “(I) consist of not more than 20  
6 industries;

7 “(II) include as industries manu-  
8 facturing, construction, professional  
9 services, wholesale, and retail indus-  
10 tries; and

11 “(III) be based on market condi-  
12 tions as identified by the most recent  
13 Economic Census of the United  
14 States.

15 “(v) REVIEWS.—The Administrator  
16 shall review the classification system estab-  
17 lished under clause (i) as part of the re-  
18 view of size standards under section 1344  
19 of the Small Business Jobs Act of 2010  
20 (15 U.S.C. 632 note).

21 “(vi) REPORT.—Not later than 180  
22 days after the date on which the Adminis-  
23 trator establishes the classification system  
24 under clause (i), the Administrator shall  
25 submit to Congress a report on the estab-

1            lishment and use of the classification sys-  
2            tem.”.

3            (b) TECHNICAL AND CONFORMING AMENDMENTS.—

4 The Small Business Investment Act of 1958 (15 U.S.C.  
5 661 et seq.) is amended—

6            (1) in section 501(e)(6)(A) (15 U.S.C.  
7            695(e)(6)(A)), by striking “in sector 31, 32, or 33  
8            of the North American Industrial Classification Sys-  
9            tem” and inserting “as ‘manufacturing’ under the  
10           classification system established under section  
11           3(a)(2)(D) of the Small Business Act (15 U.S.C.  
12           632(a)(2)(D))”; and

13           (2) in section 502(2)(B)(i) (15 U.S.C.  
14           696(2)(B)(i)), by striking “in sector 31, 32, or 33  
15           of the North American Industrial Classification Sys-  
16           tem” and inserting “as ‘manufacturing’ under the  
17           classification system established under section  
18           3(a)(2)(D) of the Small Business Act (15 U.S.C.  
19           632(a)(2)(D))”.

20 **SEC. 3. ELIMINATING THE NONMANUFACTURER EXCEP-**  
21 **TION TO SMALL BUSINESS SIZE DETERMINA-**  
22 **TIONS.**

23           (a) DEFINITIONS.—In this section—

24           (1) the term “manufacturing”—

1           (A) means being engaged in the mechan-  
2           ical, physical, or chemical transformation of  
3           materials, substances, or components into new  
4           products; and

5           (B) does not include construction; and

6           (2) the term “offeror” means the bidder on a  
7           contract solicitation.

8           (b) REGULATIONS.—Not later than 120 days after  
9           the date of enactment of this Act, the Administrator of  
10          the Small Business Administration shall promulgate regu-  
11          lations that—

12           (1) eliminate the nonmanufacturer exception to  
13          small business size determinations under section  
14          121.402(b) of title 13 and section 19.102(f) of title  
15          48, Code of Federal Regulations;

16           (2) require contracting officers to use the size  
17          standards established by the Administrator for retail  
18          and wholesale industries in procurements for prod-  
19          ucts and services by the Federal Government that  
20          are not manufactured by the offeror; and

21           (3) require contracting officers to only use size  
22          standards established by the Administrator for man-  
23          ufacturing industries if the Federal Government  
24          issues a contract for the purchase of a product or

- 1 good and the product or good is manufactured by
- 2 the offeror.

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