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Program Plan
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Title 13 → Chapter I → Part 121

Title 13: Business Credit and Assistance

PART 121—SMALL BUSINESS SIZE REGULATIONS

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EDITORIAL NOTE: Nomenclature changes to part 121 appear at 72 FR 50039 and 50040, Aug. 30, 2007.

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Subpart A—Size Eligibility Provisions and Standards

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PROVISIONS OF GENERAL APPLICABILITY

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§121.101 What are SBA size standards?

(a) SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS).

(b) NAICS is described in the North American Industry Classification Manual-United States, which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; by calling 1(800) 553-6847 or 1(703) 605-6000; or via the Internet at <http://www.ntis.gov/products/naics.aspx>. The manual includes definitions for each industry, tables showing relationships between 1997 NAICS and 1987 SICs, and a comprehensive index. NAICS assigns codes to all economic activity within twenty broad sectors. Section 121.201 provides a full table of small business size standards matched to the U.S. NAICS industry codes. A full table matching a size standard with each NAICS Industry or U.S. Industry code is also published annually by SBA in the FEDERAL REGISTER.

[65 FR 30840, May 15, 2000, as amended at 67 FR 52602, Aug. 13, 2002; 74 FR 46313, Sept. 9, 2009]

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§121.102 How does SBA establish size standards?

(a) SBA considers economic characteristics comprising the structure of an industry, including degree of competition, average firm size, start-up costs and entry barriers, and distribution of firms by size. It also considers technological changes, competition from other industries, growth trends, historical activity within an industry, unique factors occurring in the industry which may distinguish small firms from other firms, and the objectives of its programs and the impact on those programs of different size standard levels.

(b) As part of its review of a size standard, SBA will investigate if any concern at or below a particular standard would be dominant in the industry. SBA will take into consideration market share of a concern and other appropriate factors which may allow a concern to exercise a major controlling influence on a national basis in which a number of business concerns are engaged. Size standards seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.

(c) As part of its review of size standards, SBA's Office of Size Standards will examine the impact of inflation on monetary-based size standards (e.g., receipts, net income, assets) at least once every five years and submit a report to the Administrator or designee. If SBA finds that inflation has significantly eroded the value of the monetary-based size standards, it will issue a proposed rule to increase size standards.

(d) Please address any requests to change existing size standards or establish new ones for emerging industries to the Division Chief, Office of Size Standards, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 3045, Jan. 23, 2002]

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§121.103 How does SBA determine affiliation?

(a) *General Principles of Affiliation.* (1) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

(2) SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.

(3) Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

(4) Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.

(5) In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(6) In determining the concern's size, SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

(7) For SBA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, the bases for affiliation are set forth in §121.702.

(b) *Exceptions to affiliation coverage.* (1) Business concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958, as amended, are not considered affiliates of such investment companies or development companies.

(2)(i) Business concerns owned and controlled by Indian Tribes, Alaska Native Corporations (ANCs) organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs) authorized by 42 U.S.C. 9805, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered affiliates of such entities.

(ii) Business concerns owned and controlled by Indian Tribes, ANCs, NHOs, CDCs, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered to be affiliated with other concerns owned by these entities because of their common ownership or common management. In addition, affiliation will not be found based upon the performance of common administrative services, such as bookkeeping and payroll, so long as adequate payment is provided for those services. Affiliation may be found for other reasons.

(3) Business concerns which are part of an SBA approved pool of concerns for a joint program of research and development or for defense production as authorized by the Small Business Act are not affiliates of one another because of the pool.

(4) Business concerns which lease employees from concerns primarily engaged in leasing employees to other businesses or which enter into a co-employer arrangement with a Professional Employer Organization (PEO) are not affiliated with the leasing company or PEO solely on the basis of a leasing agreement.

(5) For financial, management or technical assistance under the Small Business Investment Act of 1958, as amended, (an applicant is not affiliated with the investors listed in paragraphs (b)(5) (i) through (vi) of this section.

(i) Venture capital operating companies, as defined in the U.S. Department of Labor regulations found at 29 CFR 2510.3-101(d);

(ii) Employee benefit or pension plans established and maintained by the Federal government or any state, or their political subdivisions, or any agency or instrumentality thereof, for the benefit of employees;

(iii) Employee benefit or pension plans within the meaning of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001, *et seq.*);

(iv) Charitable trusts, foundations, endowments, or similar organizations exempt from Federal income taxation under section 501(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 501(c));

(v) Investment companies registered under the Investment Company Act of 1940, as amended (1940 Act) (15 U.S.C. 80a-1, *et seq.*); and

(vi) Investment companies, as defined under the 1940 Act, which are not registered under the 1940 Act because they are beneficially owned by less than 100 persons, if the company's sales literature or organizational documents indicate that its principal purpose is investment in securities rather than the operation of commercial enterprises.

(6) An 8(a) BD Participant that has an SBA-approved mentor/protégé agreement is not affiliated with a mentor firm solely because the protégé firm receives assistance from the mentor under the agreement. Similarly, a protégé firm is not affiliated with its mentor solely because the protégé firm receives assistance from the mentor under a Federal Mentor-Protégé program where an exception to affiliation is specifically authorized by statute or by SBA under the procedures set forth in §121.903. Affiliation may be found in either case for other reasons.

(7) The member shareholders of a small agricultural cooperative, as defined in the Agricultural Marketing Act (12 U.S.C. 1141j), are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

(8) These exceptions to affiliation and any others set forth in §121.702 apply for purposes of SBA's SBIR and STTR programs.

(9) In the case of a solicitation of offers for a bundled contract with a reserve (as defined in §125.1), a small business concern prime contractor may enter into a Small Business Teaming Arrangement with one or more other small business concerns and submit an offer as a small business for a Federal procurement without regard to affiliation, so long as each team member is small under the size standard corresponding to the NAICS code assigned to the contract and there is a written, signed teaming or joint venture agreement amongst the small business concerns. See §125.1 for the definition of Small Business Teaming Arrangement. With respect to Small Business Teaming Arrangements that are joint ventures, see §121.103(h) for specific requirements and limitations.

(c) *Affiliation based on stock ownership.* (1) A person (including any individual, concern or other entity) that owns, or has the power to control, 50 percent or more of a concern's voting stock, or a block of voting stock which is large compared to other outstanding blocks of voting stock, controls or has the power to control the concern.

(2) If two or more persons (including any individual, concern or other entity) each owns, controls, or has the power to control less than 50 percent of 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 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 a specific joint venture entity generally may not be awarded more than three contracts over a two year period, starting from the date of the award of the first contract, without the partners to the joint venture being deemed affiliated for all purposes. Once a joint venture receives one contract, SBA will determine compliance with the three awards in two years rule for future awards as of the date of initial offer including price. As such, an individual joint venture may be awarded more than three contracts without SBA finding general affiliation between the joint venture partners where the joint venture had received two or fewer contracts as of the date it submitted one or more additional offers which thereafter result in one or more additional contract awards. The same two (or more) entities may create additional joint ventures, and each new joint venture entity may be awarded up to three contracts in accordance with this section. At some point, however, such a longstanding inter-relationship or contractual dependence between the same joint venture partners will lead to a finding of general affiliation between and among them. For purposes of this provision and in order to facilitate tracking of the number of contract awards made to a joint venture, a joint venture must be in writing and must do business under its own name, and it may (but need not) be in the form of a separate legal entity, and if it is a separate legal entity it may (but need not) be populated (*i.e.*, have its own separate employees). 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.

Example 1 to paragraph (h) introductory text. Joint Venture AB has received two contracts. On April 2, Joint Venture AB submits an offer for Solicitation 1. On June 6, Joint Venture AB submits an offer for Solicitation 2. On July 13, Joint Venture AB submits an offer for Solicitation 3. In September, Joint Venture AB is found to be the apparent successful offeror for all three solicitations. Even though the award of the three contracts would give Joint Venture AB a total of five contract awards, it could receive those awards without causing general affiliation between its joint venture partners because Joint Venture AB had not yet received three contract awards as of the dates of the offers for each of three solicitations at issue.

Example 2 to paragraph (h) introductory text. Joint Venture XY receives a contract on December 19, year 1. It may receive two additional contracts through December 19, year 3. On August 6, year 2, XY receives a second contract. It receives no other contract awards through December 19, year 3 and has submitted no additional offers prior to December 19, year 3. Because two years have passed since the date of the first contract award, after December 19, year 3, XY cannot receive an additional contract award. The individual parties to XY must form a new joint venture if they want to seek and be awarded additional contracts as a joint venture.

Example 3 to paragraph (h) introductory text. Joint Venture XY receives a contract on December 19, year 1. On May 22, year 2, XY submits an offer for Solicitation 1. On June 10, year 2, XY submits an offer for Solicitation 2. On June 19, year 2, XY receives a second contract responding to Solicitation 1. XY is not awarded a contract responding to Solicitation 2. On December 15, year 3, XY submits an offer for Solicitation 3. In January, XY is found to be the apparent successful offeror for Solicitation 3. XY is eligible for the contract award because compliance with the three awards in two years rule is determined as of the date of the initial offer including price, XY submitted its offer prior to December 19, year 3, and XY had not received three contract awards prior to its offer on December 15.

(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 or consolidated requirement, at any dollar value, within the meaning of §125.2(d) of this chapter; or

(B) The procurement is other than bundled or consolidated requirement within the meaning of §125.2(d) 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 §124.520 of these regulations may joint venture as a small business for any Federal government prime contract or subcontract, 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 §124.519 of these regulations. If the procurement is to be awarded through the 8(a) BD program, SBA must approve the joint venture pursuant to §124.513. If the procurement is to be awarded other than through the 8(a) BD program (e.g., small business set aside, HUBZone set aside), SBA need not approve the joint venture prior to award, but if the size status of the joint venture is protested, the provisions of §§124.513(c) and (d) will apply. This means that the joint venture must meet the requirements of §§124.513(c) and (d) in order to receive the exception to affiliation authorized by this paragraph. In either case, after contract performance is complete, the 8(a) partner to the joint venture must submit a report to its servicing SBA district office explaining how the applicable performance of work requirements were met for the contract.

(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; 76 FR 8251, Feb. 11, 2011; 77 FR 76224, Dec. 27, 2012; 78 FR 61130, Oct. 2, 2013]

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§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]

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§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]

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§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]

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§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.

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§121.108 What are the penalties for misrepresentation of size status?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small business size and status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small business concern.

(c) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the size status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a) through (c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of size was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' size. Relevant factors to consider in making this determination may include the firm's internal management procedures governing size representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as small without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for Misrepresentation.* (1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's size status pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729-3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801-3812, and any other applicable laws.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

(4) *Limitation on Liability.* An individual or business concern will not be subject to the penalties imposed under 15 U.S.C. 645(a) where it acted in good faith reliance on a small business status advisory opinion accepted by SBA under §121.109.

[78 FR 38816, June 28, 2013, as amended at 80 FR 7536, Feb. 11, 2015]

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§121.109 What is a small business status advisory opinion?

(a) *Defined.* A small business status advisory opinion is a written opinion issued by either a Small Business Development Center (SBDC) operating under part 130 of this chapter or a Procurement Technical Assistance Center (PTAC) operating under 10 U.S.C. chapter 142 which concludes that a firm is entitled to represent itself as a small business concern for purposes of federal government procurement opportunities.

(b) *Submission.* An SBDC or PTAC must submit a copy of each small business status advisory opinion it issues to the following Agency official for review: Associate General Counsel, Office of Procurement Law, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to (202) 205-6390 marked Attn: Small Business Status Advisory Opinion. A small business status advisory opinion must:

(1) Provide a written analysis explaining the reasoning underlying the SBDC or PTAC's determination that the covered concern, along with its affiliates, either does or does not exceed the size standard(s). This analysis must be dated and signed by an SBDC or PTAC business counselor or similarly qualified individual.

(2) Include, as an attachment, a completed copy of an SBA Form 355 for the covered concern and its affiliates.

(3) Include, as an attachment, copies of the evidence (such as payroll records, time sheets, federal income tax returns, etc.) provided by the covered concern to the SBDC or PTAC clearly documenting its annual receipts and/or number of employees as those terms are defined by §§121.104 and 121.106.

(c) *Review.* Unless a referral is made under paragraph (e) of this section, SBA will decide within 10 business days of

receiving a small business status advisory opinion to accept or reject it based on its consistency with part 121. SBA will provide written notification of that decision to the SBDC or PTAC that issued the small business status advisory opinion as well as to the covered concern.

(d) *Reliance*. A concern that receives a small business status advisory opinion holding that it does not exceed the applicable size standard(s) may rely upon that determination for purposes of responding to Federal procurement opportunities from the date it is issued unless and until that advisory opinion is rejected by SBA in accordance with paragraph (c) of this section or the concern undergoes a significant change in its ownership, management, or other factors bearing on its status as a small business concern. However, the firm's size may be protested by interested parties in connection with a specific procurement.

(e) *Referral for size determination*. Nothing in this section precludes the Associate General Counsel, Office of Procurement Law from requesting a formal size determination for a concern that is the subject of a small business status advisory opinion pursuant to §121.1001(b)(9).

(f) *Penalties for misrepresentation—(1) Suspension or debarment*. The SBA suspension and debarment official may suspend or debar a person or concern for misrepresenting a concern's size for purposes of obtaining a small business size status advisory opinion pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil penalties*. Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729-3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801-3812, and any other applicable laws.

(3) *Criminal Penalties*. Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

[80 FR 7536, Feb. 11, 2015]

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§121.110 What must a concern do in order to be identified as a small business concern in any Federal procurement databases?

(a) In order to be identified as a small business concern in the System for Award Management (SAM) database (or any successor thereto), a concern must certify its size in connection with specific size standards at least annually.

(b) If a firm identified as a small business concern in SAM fails to certify its size within one year of a size certification, the firm will not be listed as a small business concern in SAM, unless and until the firm recertifies its size.

[78 FR 38817, June 28, 2013. Redesignated at 80 FR 7536, Feb. 11, 2015.]

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SIZE STANDARDS USED TO DEFINE SMALL BUSINESS CONCERNS

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§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	Com 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
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 and Aquaculture			
112111	Beef Cattle Ranching and Farming		\$0.75
112112	Cattle Feedlots		\$7.5
112120	Dairy Cattle and Milk Production		\$0.75
112210	Hog and Pig Farming		\$0.75
112310	Chicken Egg Production		\$15.0
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		\$11.0
113210	Forest Nurseries and Gathering of Forest Products		\$11.0
113310	Logging		
Subsector 114—Fishing, Hunting and Trapping			
114111	Finfish Fishing		\$20.5
114112	Shellfish Fishing		\$5.5
114119	Other Marine Fishing		\$7.5
114210	Hunting and Trapping		\$5.5
Subsector 115—Support Activities for Agriculture and Forestry			
115111	Cotton Ginning		\$11.0
115112	Soil Preparation, Planting, and Cultivating		\$7.5
115113	Crop Harvesting, Primarily by Machine		\$7.5
115114	Postharvest Crop Activities (except Cotton Ginning)		\$27.5
115115	Farm Labor Contractors and Crew Leaders		\$15.0
115116	Farm Management Services		\$7.5
115210	Support Activities for Animal Production		\$7.5
115310	Support Activities for Forestry		\$7.5
Except,	Forest Fire Suppression ¹⁷		\$19.0 ¹⁷
Except,	Fuels Management Services ¹⁷		\$19.0 ¹⁷
Sector 21—Mining, Quarrying, and Oil and Gas Extraction			
Subsector 211—Oil and Gas Extraction			
211111	Crude Petroleum and Natural Gas Extraction		
211112	Natural Gas Liquid Extraction		
Subsector 212—Mining (except Oil and Gas)			
212111	Bituminous Coal and Lignite Surface Mining		
212112	Bituminous Coal Underground Mining		

500

500

500

500

500

212113	Anthracite Mining		500
212210	Iron Ore Mining		500
212221	Gold Ore Mining		500
212222	Silver Ore Mining		500
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	\$38.5	
213113	Support Activities for Coal Mining	\$20.5	
213114	Support Activities for Metal Mining	\$20.5	
213115	Support Activities for Nonmetallic Minerals (except Fuels)	\$7.5	
Sector 22—Utilities			
Subsector 221—Utilities			
221111	Hydroelectric Power Generation		500
221112	Fossil Fuel Electric Power Generation		750
221113	Nuclear Electric Power Generation		750
221114	Solar Electric Power Generation		250
221115	Wind Electric Power Generation		250
221116	Geothermal Electric Power Generation		250
221117	Biomass Electric Power Generation		250
221118	Other Electric Power Generation		250
221121	Electric Bulk Power Transmission and Control		500
221122	Electric Power Distribution		1,000
221210	Natural Gas Distribution		500
221310	Water Supply and Irrigation Systems	\$27.5	
221320	Sewage Treatment Facilities	\$20.5	
221330	Steam and Air-Conditioning Supply	\$15.0	
Sector 23—Construction			
Subsector 236—Construction of Buildings			
236115	New Single-family Housing Construction (Except For-Sale Builders)	\$36.5	
236116	New Multifamily Housing Construction (except For-Sale Builders)	\$36.5	
236117	New Housing For-Sale Builders	\$36.5	
236118	Residential Remodelers	\$36.5	
236210	Industrial Building Construction	\$36.5	
236220	Commercial and Institutional Building Construction	\$36.5	
Subsector 237—Heavy and Civil Engineering Construction			
237110	Water and Sewer Line and Related Structures Construction	\$36.5	
237120	Oil and Gas Pipeline and Related Structures Construction	\$36.5	
237130	Power and Communication Line and Related Structures Construction	\$36.5	
237210	Land Subdivision	\$27.5	
237310	Highway, Street, and Bridge Construction	\$36.5	
237990	Other Heavy and Civil Engineering Construction	\$36.5	
Except,	Dredging and Surface Cleanup Activities ²	\$27.5 ²	
Subsector 238—Specialty Trade Contractors			
238110	Poured Concrete Foundation and Structure Contractors	\$15.0	
238120	Structural Steel and Precast Concrete Contractors	\$15.0	
238130	Framing Contractors	\$15.0	
238140	Masonry Contractors	\$15.0	
238150	Glass and Glazing Contractors	\$15.0	
238160	Roofing Contractors	\$15.0	
238170	Siding Contractors	\$15.0	
238190	Other Foundation, Structure, and Building Exterior Contractors	\$15.0	
238210	Electrical Contractors and Other Wiring Installation Contractors	\$15.0	
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$15.0	
238290	Other Building Equipment Contractors	\$15.0	
238310	Drywall and Insulation Contractors	\$15.0	
238320	Painting and Wall Covering Contractors	\$15.0	
238330	Flooring Contractors	\$15.0	

238340	Tile and Terrazzo Contractors		\$15.0
238350	Finish Carpentry Contractors		\$15.0
238390	Other Building Finishing Contractors		\$15.0
238910	Site Preparation Contractors		\$15.0
238990	All Other Specialty Trade Contractors		\$15.0
Except,	Building and Property Specialty Trade Services ¹³		\$15.0 ¹³
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		500
311221	Wet Corn Milling		750
311224	Soybean and Other Oilseed Processing		1,000
311225	Fats and Oils Refining and Blending		1,000
311230	Breakfast Cereal Manufacturing		1,000
311313	Beet Sugar Manufacturing		750
311314	Cane Sugar Manufacturing		750
311340	Nonchocolate Confectionery Manufacturing		500
311351	Chocolate and Confectionery Manufacturing from Cacao Beans		500
311352	Confectionery Manufacturing from Purchased Chocolate		500
311411	Frozen Fruit, Juice and Vegetable Manufacturing		500
311412	Frozen Specialty Food Manufacturing		500
311421	Fruit and Vegetable Canning ³		³ 500
311422	Specialty Canning		1,000
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 Byproduct Processing		500
311615	Poultry Processing		500
311710	Seafood Product Preparation and Packaging		500
311811	Retail Bakeries		500
311812	Commercial Bakeries		500
311813	Frozen Cakes, Pies, and Other Pastries Manufacturing		500
311821	Cookie and Cracker Manufacturing		750
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour		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
312120	Breweries		500
312130	Wineries		500
312140	Distilleries		750
312230	Tobacco Manufacturing		1,000
Subsector 313—Textile Mills			
313110	Fiber, Yarn, and Thread Mills		500
313210	Broadwoven Fabric Mills		1,000
313220	Narrow Fabric Mills and Schiffli Machine Embroidery		500
313230	Nonwoven Fabric Mills		500
313240	Knit Fabric Mills		500
313310	Textile and Fabric Finishing Mills		1,000
313320	Fabric Coating Mills		1,000
Subsector 314—Textile Product Mills			
314110	Carpet and Rug Mills		500
314120	Curtain and Linen Mills		500
314910	Textile Bag and Canvas Mills		500
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills		1,000

314999	All Other Miscellaneous Textile Product Mills		500
Subsector 315—Apparel Manufacturing			
315110	Hosiery and Sock Mills		500
315190	Other Apparel Knitting Mills		500
315210	Cut and Sew Apparel Contractors		500
315220	Men's and Boys' Cut and Sew Apparel Manufacturing		500
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing		500
315280	Other Cut and Sew Apparel Manufacturing		500
315990	Apparel Accessories and Other Apparel Manufacturing		500
Subsector 316—Leather and Allied Product Manufacturing			
316110	Leather and Hide Tanning and Finishing		500
316210	Footwear Manufacturing		1,000
316992	Women's Handbag and Purse Manufacturing		500
316998	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
322219	Other Paperboard Container Manufacturing		750
322220	Paper Bag and Coated and Treated Paper Manufacturing		500
322230	Stationery Product Manufacturing		500
322291	Sanitary Paper Product Manufacturing		500
322299	All Other Converted Paper Product Manufacturing		500
Subsector 323—Printing and Related Support Activities			
323111	Commercial Printing (except Screen and Books)		500
323113	Commercial Screen Printing		500
323117	Books Printing		500
323120	Support Activities for Printing		500
Subsector 324—Petroleum and Coal Products Manufacturing			
324110	Petroleum Refineries ⁴		4,500
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
Subsector 325—Chemical Manufacturing			
325110	Petrochemical Manufacturing		1,000
325120	Industrial Gas Manufacturing		1,000
325130	Synthetic Dye and Pigment Manufacturing		1,000
325180	Other Basic Inorganic Chemical Manufacturing		1,000
325193	Ethyl Alcohol Manufacturing		1,000
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing		750
325199	All Other Basic Organic Chemical Manufacturing		1,000
325211	Plastics Material and Resin Manufacturing		750
325212	Synthetic Rubber Manufacturing		1,000
325220	Artificial and Synthetic Fibers and Filaments 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	Plastics Packaging Film and Sheet(including Laminated) Manufacturing		500
326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing		500
326121	Unlaminated Plastics Profile Shape Manufacturing		500
326122	Plastics Pipe and Pipe Fitting Manufacturing		500
326130	Laminated Plastics Plate, Sheet (except Packaging), 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		500
326199	All Other Plastics Product Manufacturing		750
326211	Tire Manufacturing (except Retreading) ⁵		51,000
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			
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing		750
327120	Clay Building Material and Refractories 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		500
327420	Gypsum Product Manufacturing		1,000
327910	Abrasive Product Manufacturing		500
327991	Cut Stone and Stone Product Manufacturing		500
327992	Ground or Treated Mineral and Earth Manufacturing		500
327993	Mineral Wool Manufacturing		750
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing		500
Subsector 331—Primary Metal Manufacturing			
331110	Iron and Steel Mills and Ferroalloy Manufacturing		1,000
331210	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel		1,000
331221	Rolled Steel Shape Manufacturing		1,000
331222	Steel Wire Drawing		1,000
331313	Alumina Refining and Primary Aluminum Production		1,000
331314	Secondary Smelting and Alloying of Aluminum		750
331315	Aluminum Sheet, Plate and Foil Manufacturing		750
331318	Other Aluminum Rolling, Drawing, and Extruding		750
331410	Nonferrous Metal (except Aluminum) Smelting and Refining		1,000
331420	Copper Rolling, Drawing, Extruding, and Alloying		1,000
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
331523	Nonferrous Metal Die-Casting Foundries		500
331524	Aluminum Foundries (except Die-Casting)		500
331529	Other Nonferrous Metal 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
332117	Powder Metallurgy Part Manufacturing		500
332119	Metal Crown, Closure, and Other Metal Stamping (except Automotive)		500
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing		500

332216	Saw Blade and Handtool 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	500
332431	Metal Can Manufacturing	1,000
332439	Other Metal Container Manufacturing	500
332510	Hardware Manufacturing	500
332613	Spring 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	500
332811	Metal Heat Treating	750
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	500
332991	Ball and Roller Bearing Manufacturing	750
332992	Small Arms Ammunition Manufacturing	1,000
332993	Ammunition (except Small Arms) Manufacturing	1,500
332994	Small Arms, Ordnance, and Ordnance Accessories Manufacturing	1,000
332996	Fabricated Pipe and Pipe Fitting Manufacturing	500
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	750
Subsector 333—Machinery Manufacturing⁶		
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
333241	Food Product Machinery Manufacturing	500
333242	Semiconductor Machinery Manufacturing	500
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing	500
333244	Printing Machinery and Equipment Manufacturing	500
333249	Other Industrial Machinery Manufacturing	500
333314	Optical Instrument and Lens Manufacturing	500
333316	Photographic and Photocopying Equipment Manufacturing	1,000
333318	Other Commercial and Service Industry Machinery Manufacturing	1,000
333413	Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing	500
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	500
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	750
333511	Industrial Mold Manufacturing	500
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing	500
333515	Cutting Tool and Machine Tool Accessory Manufacturing	500
333517	Machine Tool Manufacturing	500
333519	Rolling Mill and Other Metalworking Machinery Manufacturing	500
333611	Turbine and Turbine Generator Set Unit Manufacturing	1,000
333612	Speed Changer, Industrial High-Speed Drive and Gear Manufacturing	500
333613	Mechanical Power Transmission Equipment Manufacturing	500
333618	Other Engine Equipment Manufacturing	1,000
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	500
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 Manufacturing⁶			
334111	Electronic Computer Manufacturing		1,000
334112	Computer Storage Device Manufacturing		1,000
334118	Computer Terminal and 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
334412	Bare Printed Circuit Board Manufacturing		500
334413	Semiconductor and Related Device Manufacturing		500
334416	Capacitor, Resistor, 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		750
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing		500
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing		750
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
334519	Other Measuring and Controlling Device Manufacturing		500
334613	Blank Magnetic and Optical Recording Media Manufacturing		1,000
334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing		750
Subsector 335—Electrical Equipment, Appliance and Component Manufacturing⁶			
335110	Electric Lamp Bulb and Part Manufacturing		1,000
335121	Residential Electric Lighting Fixture Manufacturing		500
335122	Commercial, Industrial and Institutional Electric Lighting Fixture Manufacturing		500
335129	Other Lighting Equipment Manufacturing		500
335210	Small Electrical Appliance Manufacturing		750
335221	Household Cooking Appliance Manufacturing		750
335222	Household Refrigerator and Home Freezer Manufacturing		1,000
335224	Household Laundry Equipment Manufacturing		1,000
335228	Other Major Household Appliance Manufacturing		500
335311	Power, Distribution and Specialty Transformer Manufacturing		750
335312	Motor and Generator Manufacturing		1,000
335313	Switchgear and Switchboard Apparatus Manufacturing		750
335314	Relay and Industrial Control Manufacturing		750
335911	Storage Battery Manufacturing		500
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 Manufacturing⁶			
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
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing		750
336320	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
336390	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		1,000
336612	Boat Building		500
336991	Motorcycle, Bicycle and Parts Manufacturing		500
336992	Military Armored Vehicle, Tank and Tank Component Manufacturing		1,000
336999	All Other Transportation Equipment Manufacturing		500
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
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
339910	Jewelry and Silverware Manufacturing		500
339920	Sporting and Athletic Goods Manufacturing		500
339930	Doll, Toy, and Game Manufacturing		500
339940	Office Supplies (except Paper) 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			
(These NAICS codes shall not be used to classify Government acquisitions for supplies. They also shall not be used by Federal Government contractors when subcontracting for the acquisition for supplies. The applicable manufacturing NAICS code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer or a quote on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.)			
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	Household Appliances, Electric Housewares, and Consumer Electronics 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
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
Sector 44-45—Retail Trade			
(These NAICS codes shall not be used to classify Government acquisitions for supplies. They also shall not be used by Federal Government contractors when subcontracting for the acquisition for supplies. The applicable manufacturing NAICS code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer or a quote on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.)			
Subsector 441—Motor Vehicle and Parts Dealers			
441110	New Car Dealers		200
441120	Used Car Dealers	\$25.0	
441210	Recreational Vehicle Dealers	\$32.5	
441222	Boat Dealers	\$32.5	
441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers	\$32.5	
441310	Automotive Parts and Accessories Stores	\$15.0	
441320	Tire Dealers	\$15.0	
Subsector 442—Furniture and Home Furnishings Stores			
442110	Furniture Stores	\$20.5	
442210	Floor Covering Stores	\$7.5	
442291	Window Treatment Stores	\$7.5	
442299	All Other Home Furnishings Stores	\$20.5	
Subsector 443—Electronics and Appliance Stores			
443141	Household Appliance Stores	\$11.0	
443142	Electronics Stores	\$32.5	
Subsector 444—Building Material and Garden Equipment and Supplies Dealers			
444110	Home Centers	\$38.5	
444120	Paint and Wallpaper Stores	\$27.5	
444130	Hardware Stores	\$7.5	
444190	Other Building Material Dealers	\$20.5	
444210	Outdoor Power Equipment Stores	\$7.5	
444220	Nursery and Garden Centers	\$11.0	
Subsector 445—Food and Beverage Stores			

445110	Supermarkets and Other Grocery (except Convenience) Stores	\$32.5	
445120	Convenience Stores	\$29.5	
445210	Meat Markets	\$7.5	
445220	Fish and Seafood Markets	\$7.5	
445230	Fruit and Vegetable Markets	\$7.5	
445291	Baked Goods Stores	\$7.5	
445292	Confectionery and Nut Stores	\$7.5	
445299	All Other Specialty Food Stores	\$7.5	
445310	Beer, Wine and Liquor Stores	\$7.5	
Subsector 446—Health and Personal Care Stores			
446110	Pharmacies and Drug Stores	\$27.5	
446120	Cosmetics, Beauty Supplies and Perfume Stores	\$27.5	
446130	Optical Goods Stores	\$20.5	
446191	Food (Health) Supplement Stores	\$15.0	
446199	All Other Health and Personal Care Stores	\$7.5	
Subsector 447—Gasoline Stations			
447110	Gasoline Stations with Convenience Stores	\$29.5	
447190	Other Gasoline Stations	\$15.0	
Subsector 448—Clothing and Clothing Accessories Stores			
448110	Men's Clothing Stores	\$11.0	
448120	Women's Clothing Stores	\$27.5	
448130	Children's and Infants' Clothing Stores	\$32.5	
448140	Family Clothing Stores	\$38.5	
448150	Clothing Accessories Stores	\$15.0	
448190	Other Clothing Stores	\$20.5	
448210	Shoe Stores	\$27.5	
448310	Jewelry Stores	\$15.0	
448320	Luggage and Leather Goods Stores	\$27.5	
Subsector 451—Sporting Good, Hobby, Book and Music Stores			
451110	Sporting Goods Stores	\$15.0	
451120	Hobby, Toy and Game Stores	\$27.5	
451130	Sewing, Needlework and Piece Goods Stores	\$27.5	
451140	Musical Instrument and Supplies Stores	\$11.0	
451211	Book Stores	\$27.5	
451212	News Dealers and Newsstands	\$7.5	
Subsector 452—General Merchandise Stores			
452111	Department Stores (except Discount Department Stores)	\$32.5	
452112	Discount Department Stores	\$29.5	
452910	Warehouse Clubs and Superstores	\$29.5	
452990	All Other General Merchandise Stores	\$32.5	
Subsector 453—Miscellaneous Store Retailers			
453110	Florists	\$7.5	
453210	Office Supplies and Stationery Stores	\$32.5	
453220	Gift, Novelty and Souvenir Stores	\$7.5	
453310	Used Merchandise Stores	\$7.5	
453910	Pet and Pet Supplies Stores	\$20.5	
453920	Art Dealers	\$7.5	
453930	Manufactured (Mobile) Home Dealers	\$15.0	
453991	Tobacco Stores	\$7.5	
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$7.5	
Subsector 454—Nonstore Retailers			
454111	Electronic Shopping	\$32.5	
454112	Electronic Auctions	\$38.5	
454113	Mail-Order Houses	\$38.5	
454210	Vending Machine Operators	\$11.0	
454310	Fuel Dealers		50
454390	Other Direct Selling Establishments	\$7.5	
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	\$30.5	
481212	Nonscheduled Chartered Freight Air Transportation		1,500
Except,	Offshore Marine Air Transportation Services	\$30.5	
481219	Other Nonscheduled Air Transportation	\$15.0	
Subsector 482—Rail Transportation			
482111	Line-Haul Railroads		1,500
482112	Short Line Railroads		500
Subsector 483—Water Transportation¹⁵			
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	\$27.5	
484121	General Freight Trucking, Long-Distance, Truckload	\$27.5	
484122	General Freight Trucking, Long-Distance, Less Than Truckload	\$27.5	
484210	Used Household and Office Goods Moving	\$27.5	
484220	Specialized Freight (except Used Goods) Trucking, Local	\$27.5	
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	\$27.5	
Subsector 485—Transit and Ground Passenger Transportation			
485111	Mixed Mode Transit Systems	\$15.0	
485112	Commuter Rail Systems	\$15.0	
485113	Bus and Other Motor Vehicle Transit Systems	\$15.0	
485119	Other Urban Transit Systems	\$15.0	
485210	Interurban and Rural Bus Transportation	\$15.0	
485310	Taxi Service	\$15.0	
485320	Limousine Service	\$15.0	
485410	School and Employee Bus Transportation	\$15.0	
485510	Charter Bus Industry	\$15.0	
485991	Special Needs Transportation	\$15.0	
485999	All Other Transit and Ground Passenger Transportation	\$15.0	
Subsector 486—Pipeline Transportation			
486110	Pipeline Transportation of Crude Oil		1,500
486210	Pipeline Transportation of Natural Gas	\$27.5	
486910	Pipeline Transportation of Refined Petroleum Products		1,500
486990	All Other Pipeline Transportation	\$37.50	
Subsector 487—Scenic and Sightseeing Transportation			
487110	Scenic and Sightseeing Transportation, Land	\$7.5	
487210	Scenic and Sightseeing Transportation, Water	\$7.5	
487990	Scenic and Sightseeing Transportation, Other	\$7.5	
Subsector 488—Support Activities for Transportation			
488111	Air Traffic Control	\$32.5	
488119	Other Airport Operations	\$32.5	
488190	Other Support Activities for Air Transportation	\$32.5	
488210	Support Activities for Rail Transportation	\$15.0	
488310	Port and Harbor Operations	\$38.5	
488320	Marine Cargo Handling	\$38.5	
488330	Navigational Services to Shipping	\$38.5	
488390	Other Support Activities for Water Transportation	\$38.5	
488410	Motor Vehicle Towing	\$7.5	
488490	Other Support Activities for Road Transportation	\$7.5	
488510	Freight Transportation Arrangement ¹⁰	\$15.0 ¹⁰	
Except,	Non-Vessel Owning Common Carriers and Household Goods Forwarders	\$27.5	
488991	Packing and Crating	\$27.5	
488999	All Other Support Activities for Transportation	\$7.5	
Subsector 491—Postal Service			
491110	Postal Service	\$7.5	
Subsector 492—Couriers and Messengers			
492110	Couriers and Express Delivery Services		1,500
492210	Local Messengers and Local Delivery	\$27.5	
Subsector 493—Warehousing and Storage			
493110	General Warehousing and Storage	\$27.5	
493120	Refrigerated Warehousing and Storage	\$27.5	
493130	Farm Product Warehousing and Storage	\$27.5	
493190	Other Warehousing and Storage	\$27.5	
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	\$38.5	
Subsector 512—Motion Picture and Sound Recording Industries			
512110	Motion Picture and Video Production	\$32.5	
512120	Motion Picture and Video Distribution	\$32.0	
512131	Motion Picture Theaters (except Drive-Ins)	\$38.5	
512132	Drive-In Motion Picture Theaters	\$7.5	
512191	Teleproduction and Other Postproduction Services	\$32.0	
512199	Other Motion Picture and Video Industries	\$20.5	
512210	Record Production	\$7.5	

512220	Integrated Record Production/Distribution		750
512230	Music Publishers		500
512240	Sound Recording Studios	\$7.5	
512290	Other Sound Recording Industries	\$11.0	
Subsector 515—Broadcasting (except Internet)			
515111	Radio Networks	\$32.5	
515112	Radio Stations	\$38.5	
515120	Television Broadcasting	\$38.5	
515210	Cable and Other Subscription Programming	\$38.5	
Subsector 517—Telecommunications			
517110	Wired Telecommunications Carriers		1,500
517210	Wireless Telecommunications Carriers (except Satellite)		1,500
517410	Satellite Telecommunications	\$32.5	
517911	Telecommunications Resellers		1,500
517919	All Other Telecommunications	\$32.5	
Subsector 518—Data Processing, Hosting, and Related Services			
518210	Data Processing, Hosting, and Related Services	\$32.5	
Subsector 519—Other Information Services			
519110	News Syndicates	\$27.5	
519120	Libraries and Archives	\$15.0	
519130	Internet Publishing and Broadcasting and Web Search Portals		500
519190	All Other Information Services	\$27.5	
Sector 52—Finance and Insurance			
Subsector 522—Credit Intermediation and Related Activities			
522110	Commercial Banking ^b	\$550 million in assets ^a	
522120	Savings Institutions ^b	\$550 million in assets ^a	
522130	Credit Unions ^b	\$550 million in assets ^a	
522190	Other Depository Credit Intermediation ^b	\$550 million in assets ^a	
522210	Credit Card Issuing ^b	\$550 million in assets ^a	
522220	Sales Financing	\$38.5	
522291	Consumer Lending	\$38.5	
522292	Real Estate Credit	\$38.5	
522293	International Trade Financing	\$38.5	
522294	Secondary Market Financing	\$38.5	
522298	All Other Nondepository Credit Intermediation	\$38.5	
522310	Mortgage and Nonmortgage Loan Brokers	\$7.5	
522320	Financial Transactions Processing, Reserve, and Clearinghouse Activities	\$38.5	
522390	Other Activities Related to Credit Intermediation	\$20.5	
Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities			
523110	Investment Banking and Securities Dealing	\$38.5	
523120	Securities Brokerage	\$38.5	
523130	Commodity Contracts Dealing	\$38.5	
523140	Commodity Contracts Brokerage	\$38.5	
523210	Securities and Commodity Exchanges	\$38.5	
523910	Miscellaneous Intermediation	\$38.5	
523920	Portfolio Management	\$38.5	
523930	Investment Advice	\$38.5	
523991	Trust, Fiduciary and Custody Activities	\$38.5	
523999	Miscellaneous Financial Investment Activities	\$38.5	
Subsector 524—Insurance Carriers and Related Activities			
524113	Direct Life Insurance Carriers	\$38.5	
524114	Direct Health and Medical Insurance Carriers	\$38.5	
524126	Direct Property and Casualty Insurance Carriers		1,500
524127	Direct Title Insurance Carriers	\$38.5	
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	\$38.5	
524130	Reinsurance Carriers	\$38.5	
524210	Insurance Agencies and Brokerages	\$7.5	
524291	Claims Adjusting	\$20.5	
524292	Third Party Administration of Insurance and Pension Funds	\$32.5	
524298	All Other Insurance Related Activities	\$15.0	
Subsector 525—Funds, Trusts and Other Financial Vehicles			
525110	Pension Funds	\$32.5	
525120	Health and Welfare Funds	\$32.5	
525190	Other Insurance Funds	\$32.5	
525910	Open-End Investment Funds	\$32.5	
525920	Trusts, Estates, and Agency Accounts	\$32.5	
525990	Other Financial Vehicles	\$32.5	
Sector 53—Real Estate and Rental and Leasing			
Subsector 531—Real Estate			
531110	Lessors of Residential Buildings and Dwellings ⁹	\$27.5 ⁹	
531120	Lessors of Nonresidential Buildings (except Miniwarehouses) ⁹	\$27.5 ⁹	
531130			

	Lessors of Miniwarehouses and Self Storage Units ⁹	\$27.5 ⁹	
531190	Lessors of Other Real Estate Property ⁹	\$27.5 ⁹	
531210	Offices of Real Estate Agents and Brokers ¹⁰	\$7.5 ¹⁰	
531311	Residential Property Managers	\$7.5	
531312	Nonresidential Property Managers	\$7.5	
531320	Offices of Real Estate Appraisers	\$7.5	
531390	Other Activities Related to Real Estate	\$7.5	
Subsector 532—Rental and Leasing Services			
532111	Passenger Car Rental	\$38.5	
532112	Passenger Car Leasing	\$38.5	
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	\$38.5	
532210	Consumer Electronics and Appliances Rental	\$38.5	
532220	Formal Wear and Costume Rental	\$20.5	
532230	Video Tape and Disc Rental	\$27.5	
532291	Home Health Equipment Rental	\$32.5	
532292	Recreational Goods Rental	\$7.5	
532299	All Other Consumer Goods Rental	\$7.5	
532310	General Rental Centers	\$7.5	
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	\$32.5	
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	\$32.5	
532420	Office Machinery and Equipment Rental and Leasing	\$32.5	
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	\$32.5	
Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)			
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	\$38.5	
Sector 54—Professional, Scientific and Technical Services			
Subsector 541—Professional, Scientific and Technical Services			
541110	Offices of Lawyers	\$11.0	
541191	Title Abstract and Settlement Offices	\$11.0	
541199	All Other Legal Services	\$11.0	
541211	Offices of Certified Public Accountants	\$20.5	
541213	Tax Preparation Services	\$20.5	
541214	Payroll Services	\$20.5	
541219	Other Accounting Services	\$20.5	
541310	Architectural Services	\$7.5	
541320	Landscape Architectural Services	\$7.5	
541330	Engineering Services	\$15.0	
Except,	Military and Aerospace Equipment and Military Weapons	\$38.5	
Except,	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	\$38.5	
Except,	Marine Engineering and Naval Architecture	\$38.5	
541340	Drafting Services	\$7.5	
541350	Building Inspection Services	\$7.5	
541360	Geophysical Surveying and Mapping Services	\$15.0	
541370	Surveying and Mapping (except Geophysical) Services	\$15.0	
541380	Testing Laboratories	\$15.0	
541410	Interior Design Services	\$7.5	
541420	Industrial Design Services	\$7.5	
541430	Graphic Design Services	\$7.5	
541490	Other Specialized Design Services	\$7.5	
541511	Custom Computer Programming Services	\$27.5	
541512	Computer Systems Design Services	\$27.5	
541513	Computer Facilities Management Services	\$27.5	
541519	Other Computer Related Services	\$27.5	
Except,	Information Technology Value Added Resellers ¹⁸		150 ¹⁸
541611	Administrative Management and General Management Consulting Services	\$15.0	
541612	Human Resources Consulting Services	\$15.0	
541613	Marketing Consulting Services	\$15.0	
541614	Process, Physical Distribution and Logistics Consulting Services	\$15.0	
541618	Other Management Consulting Services	\$15.0	
541620	Environmental Consulting Services	\$15.0	
541690	Other Scientific and Technical Consulting Services	\$15.0	
541711	Research and Development in Biotechnology. ¹¹		11500
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology). ¹¹		11500
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	\$20.5	
541810	Advertising Agencies ¹⁰	\$15.0 ¹⁰	
541820	Public Relations Agencies	\$15.0	
541830	Media Buying Agencies	\$15.0	

541840	Media Representatives	\$15.0
541850	Outdoor Advertising	\$15.0
541860	Direct Mail Advertising	\$15.0
541870	Advertising Material Distribution Services	\$15.0
541890	Other Services Related to Advertising	\$15.0
541910	Marketing Research and Public Opinion Polling	\$15.0
541921	Photography Studios, Portrait	\$7.5
541922	Commercial Photography	\$7.5
541930	Translation and Interpretation Services	\$7.5
541940	Veterinary Services	\$7.5
541990	All Other Professional, Scientific and Technical Services	\$15.0
Sector 55—Management of Companies and Enterprises		
Subsector 551—Management of Companies and Enterprises		
551111	Offices of Bank Holding Companies	\$20.5
551112	Offices of Other Holding Companies	\$20.5
Sector 56—Administrative and Support, Waste Management and Remediation Services		
Subsector 561—Administrative and Support Services		
561110	Office Administrative Services	\$7.5
561210	Facilities Support Services ¹²	\$38.5 ¹²
561311	Employment Placement Agencies	\$27.5
561312	Executive Search Services	\$27.5
561320	Temporary Help Services	\$27.5
561330	Professional Employer Organizations	\$27.5
561410	Document Preparation Services	\$15.0
561421	Telephone Answering Services	\$15.0
561422	Telemarketing Bureaus and Other contact Centers	\$15.0
561431	Private Mail Centers	\$15.0
561439	Other Business Service Centers (including Copy Shops)	\$15.0
561440	Collection Agencies	\$15.0
561450	Credit Bureaus	\$15.0
561491	Repossession Services	\$15.0
561492	Court Reporting and Stenotype Services	\$15.0
561499	All Other Business Support Services	\$15.0
561510	Travel Agencies ¹⁰	\$20.5 ¹⁰
561520	Tour Operators ¹⁰	\$20.5 ¹⁰
561591	Convention and Visitors Bureaus	\$20.5
561599	All Other Travel Arrangement and Reservation Services	\$20.5
561611	Investigation Services	\$20.5
561612	Security Guards and Patrol Services	\$20.5
561613	Armored Car Services	\$20.5
561621	Security Systems Services (except Locksmiths)	\$20.5
561622	Locksmiths	\$20.5
561710	Exterminating and Pest Control Services	\$11.0
561720	Janitorial Services	\$18.0
561730	Landscaping Services	\$7.5
561740	Carpet and Upholstery Cleaning Services	\$5.5
561790	Other Services to Buildings and Dwellings	\$7.5
561910	Packaging and Labeling Services	\$11.0
561920	Convention and Trade Show Organizers ¹⁰	\$11.0 ¹⁰
561990	All Other Support Services	\$11.0
Subsector 562—Waste Management and Remediation Services		
562111	Solid Waste Collection	\$38.5
562112	Hazardous Waste Collection	\$38.5
562119	Other Waste Collection	\$38.5
562211	Hazardous Waste Treatment and Disposal	\$38.5
562212	Solid Waste Landfill	\$38.5
562213	Solid Waste Combustors and Incinerators	\$38.5
562219	Other Nonhazardous Waste Treatment and Disposal	\$38.5
562910	Remediation Services	\$20.5
Except,	Environmental Remediation Services ¹⁴	500 ¹⁴
562920	Materials Recovery Facilities	\$20.5
562991	Septic Tank and Related Services	\$7.5
562998	All Other Miscellaneous Waste Management Services	\$7.5
Sector 61—Educational Services		
Subsector 611—Educational Services		
611110	Elementary and Secondary Schools	\$11.0
611210	Junior Colleges	\$20.5
611310	Colleges, Universities and Professional Schools	\$27.5
611410	Business and Secretarial Schools	\$7.5
611420	Computer Training	\$11.0
611430	Professional and Management Development Training	\$11.0
611511	Cosmetology and Barber Schools	\$7.5

611512	Flight Training	\$27.5
611513	Apprenticeship Training	\$7.5
611519	Other Technical and Trade Schools	\$15.0
<i>Except,</i>	Job Corps Centers ¹⁶	\$38.5 ¹⁶
611610	Fine Arts Schools	\$7.5
611620	Sports and Recreation Instruction	\$7.5
611630	Language Schools	\$11.0
611691	Exam Preparation and Tutoring	\$7.5
611692	Automobile Driving Schools	\$7.5
611699	All Other Miscellaneous Schools and Instruction	\$11.0
611710	Educational Support Services	\$15.0
Sector 62—Health Care and Social Assistance		
Subsector 621—Ambulatory Health Care Services		
621111	Offices of Physicians (except Mental Health Specialists)	\$11.0
621112	Offices of Physicians, Mental Health Specialists	\$11.0
621210	Offices of Dentists	\$7.5
621310	Offices of Chiropractors	\$7.5
621320	Offices of Optometrists	\$7.5
621330	Offices of Mental Health Practitioners (except Physicians)	\$7.5
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	\$7.5
621391	Offices of Podiatrists	\$7.5
621399	Offices of All Other Miscellaneous Health Practitioners	\$7.5
621410	Family Planning Centers	\$11.0
621420	Outpatient Mental Health and Substance Abuse Centers	\$15.0
621491	HMO Medical Centers	\$32.5
621492	Kidney Dialysis Centers	\$38.5
621493	Freestanding Ambulatory Surgical and Emergency Centers	\$15.0
621498	All Other Outpatient Care Centers	\$20.5
621511	Medical Laboratories	\$32.5
621512	Diagnostic Imaging Centers	\$15.0
621610	Home Health Care Services	\$15.0
621910	Ambulance Services	\$15.0
621991	Blood and Organ Banks	\$32.5
621999	All Other Miscellaneous Ambulatory Health Care Services	\$15.0
Subsector 622—Hospitals		
622110	General Medical and Surgical Hospitals	\$38.5
622210	Psychiatric and Substance Abuse Hospitals	\$38.5
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	\$38.5
Subsector 623—Nursing and Residential Care Facilities		
623110	Nursing Care Facilities (Skilled Nursing Facilities)	\$27.5
623210	Residential Intellectual and Developmental Disability Facilities	\$15.0
623220	Residential Mental Health and Substance Abuse Facilities	\$15.0
623311	Continuing Care Retirement Communities	\$27.5
623312	Assisted Living Facilities for the Elderly	\$11.0
623990	Other Residential Care Facilities	\$11.0
Subsector 624—Social Assistance		
624110	Child and Youth Services	\$11.0
624120	Services for the Elderly and Persons with Disabilities	\$11.0
624190	Other Individual and Family Services	\$11.0
624210	Community Food Services	\$11.0
624221	Temporary Shelters	\$11.0
624229	Other Community Housing Services	\$15.0
624230	Emergency and Other Relief Services	\$32.5
624310	Vocational Rehabilitation Services	\$11.0
624410	Child Day Care Services	\$7.5
Sector 71—Arts, Entertainment and Recreation		
Subsector 711—Performing Arts, Spectator Sports and Related Industries		
711110	Theater Companies and Dinner Theaters	\$20.5
711120	Dance Companies	\$11.0
711130	Musical Groups and Artists	\$11.0
711190	Other Performing Arts Companies	\$27.5
711211	Sports Teams and Clubs	\$38.5
711212	Race Tracks	\$38.5
711219	Other Spectator Sports	\$11.0
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	\$32.5
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	\$15.0
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	\$11.0
711510	Independent Artists, Writers, and Performers	\$7.5
Subsector 712—Museums, Historical Sites and Similar Institutions		
712110	Museums	\$27.5
712120	Historical Sites	\$7.5
712130	Zoos and Botanical Gardens	\$27.5
712190	Nature Parks and Other Similar Institutions	\$7.5

Subsector 713—Amusement, Gambling and Recreation Industries

713110	Amusement and Theme Parks	\$38.5
713120	Amusement Arcades	\$7.5
713210	Casinos (except Casino Hotels)	\$27.5
713290	Other Gambling Industries	\$32.5
713910	Golf Courses and Country Clubs	\$15.0
713920	Skiing Facilities	\$27.5
713930	Marinas	\$7.5
713940	Fitness and Recreational Sports Centers	\$7.5
713950	Bowling Centers	\$7.5
713990	All Other Amusement and Recreation Industries	\$7.5

Sector 72—Accommodation and Food Services**Subsector 721—Accommodation**

721110	Hotels (except Casino Hotels) and Motels	\$32.5
721120	Casino Hotels	\$32.5
721191	Bed-and-Breakfast Inns	\$7.5
721199	All Other Traveler Accommodation	\$7.5
721211	RV (Recreational Vehicle) Parks and Campgrounds	\$7.5
721214	Recreational and Vacation Camps (except Campgrounds)	\$7.5
721310	Rooming and Boarding Houses	\$7.5

Subsector 722—Food Services and Drinking Places

722310	Food Service Contractors	\$38.5
722320	Caterers	\$7.5
722330	Mobile Food Services	\$7.5
722410	Drinking Places (Alcoholic Beverages)	\$7.5
722511	Full-Service Restaurants	\$7.5
722513	Limited-Service Restaurants	\$11.0
722514	Cafeterias, Grill Buffets, and Buffets	\$27.5
722515	Snack and Nonalcoholic Beverage Bars	\$7.5

Sector 81—Other Services (Except Public Administration)**Subsector 811—Repair and Maintenance**

811111	General Automotive Repair	\$7.5
811112	Automotive Exhaust System Repair	\$7.5
811113	Automotive Transmission Repair	\$7.5
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	\$7.5
811121	Automotive Body, Paint and Interior Repair and Maintenance	\$7.5
811122	Automotive Glass Replacement Shops	\$11.0
811191	Automotive Oil Change and Lubrication Shops	\$7.5
811192	Car Washes	\$7.5
811198	All Other Automotive Repair and Maintenance	\$7.5
811211	Consumer Electronics Repair and Maintenance	\$7.5
811212	Computer and Office Machine Repair and Maintenance	\$27.5
811213	Communication Equipment Repair and Maintenance	\$11.0
811219	Other Electronic and Precision Equipment Repair and Maintenance	\$20.5
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$7.5
811411	Home and Garden Equipment Repair and Maintenance	\$7.5
811412	Appliance Repair and Maintenance	\$15.0
811420	Reupholstery and Furniture Repair	\$7.5
811430	Footwear and Leather Goods Repair	\$7.5
811490	Other Personal and Household Goods Repair and Maintenance	\$7.5

Subsector 812—Personal and Laundry Services

812111	Barber Shops	\$7.5
812112	Beauty Salons	\$7.5
812113	Nail Salons	\$7.5
812191	Diet and Weight Reducing Centers	\$20.5
812199	Other Personal Care Services	\$7.5
812210	Funeral Homes and Funeral Services	\$7.5
812220	Cemeteries and Crematories	\$20.5
812310	Coin-Operated Laundries and Drycleaners	\$7.5
812320	Drycleaning and Laundry Services (except Coin-Operated)	\$5.5
812331	Linen Supply	\$32.5
812332	Industrial Launderers	\$38.5
812910	Pet Care (except Veterinary) Services	\$7.5
812921	Photofinishing Laboratories (except One-Hour)	\$20.5
812922	One-Hour Photofinishing	\$15.0
812930	Parking Lots and Garages	\$38.5
812990	All Other Personal Services	\$7.5

Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations

813110	Religious Organizations	\$7.5
813211	Grantmaking Foundations	\$32.5
813212	Voluntary Health Organizations	\$27.5
813219	Other Grantmaking and Giving Services	\$38.5

813311	Human Rights Organizations	\$27.5
813312	Environment, Conservation and Wildlife Organizations	\$15.0
813319	Other Social Advocacy Organizations	\$7.5
813410	Civic and Social Organizations	\$7.5
813910	Business Associations	\$7.5
813920	Professional Organizations	\$15.0
813930	Labor Unions and Similar Labor Organizations	\$7.5
813940	Political Organizations	\$7.5
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	\$7.5
Sector 92—Public Administration¹⁹		
(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. [Reserved]

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, and 522210—*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 041 call report form for NAICS codes 522110, 522120, 522190, and 522210 and the National Credit Union Administration 5300 call report form for NAICS code 522130.

9. *NAICS codes 531110, 531120, 531130, and 531190—Leasing of Building Space to the Federal Government by Owners:* For Government procurement, a size standard of \$38.5 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) and the Small Business Technology Transfer (STTR) Programs only, a different definition has been established by law. See §121.702 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 \$30.5 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 NOTES: 1. 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 at www.fdsys.gov.

1. At 73 FR 12870, Mar. 11, 2008, §121.201 was amended; however, several amendments could not be incorporated due to inaccurate amendatory instruction.

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SIZE ELIGIBILITY REQUIREMENTS FOR SBA FINANCIAL ASSISTANCE

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§121.301 What size standards are applicable to financial assistance programs?

(a) For Business Loans (other than for 7(a) Business Loans for the period beginning May 5, 2009 and ending on September 30, 2010) and for 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, which ever is higher. These size standards are set forth in §121.201.

(b) For Development Company programs and, for the period beginning May 5, 2009 and ending on September 30, 2010, for 7(a) Business Loans, 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 \$8.5 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 \$3.0 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 \$19.5 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 \$6.5 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 (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—a business concern, combined with its affiliates, must meet the size standard for the primary industry in which such business concern, combined with its affiliates, is engaged.

(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; 73 FR 41254, July 18, 2008; 74 FR 20580, May 5, 2009; 74 FR 36110, July 22, 2009; 75 FR 48550, Aug. 11, 2010; 79 FR 33669, June 12, 2014; 79 FR 71296, Dec. 2, 2014]

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§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 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; 73 FR 41254, July 18, 2008; 75 FR 48550, Aug. 11, 2010; 79 FR 33669, June 12, 2014]

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§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.

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§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.

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§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.

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SIZE ELIGIBILITY REQUIREMENTS FOR GOVERNMENT PROCUREMENT

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§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, the Women Owned Small Business (WOSB) Federal Contract Program, SBA's Service-Disabled Veteran-Owned Small Business program, the Small Business Subcontracting program, and the Federal Small Disadvantaged Business (SDB) program.

[75 FR 62280, Oct. 7, 2010]

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§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 corresponding size standard in a solicitation, selecting the single NAICS code which best describes the principal purpose of the product or service being acquired. Except for multiple award contracts as set forth in paragraph (c) of this section, every solicitation, including a request for quotations, must contain only one NAICS code and only one corresponding size standard.

(1) Primary consideration is given to the industry descriptions in the U.S. NAICS 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.

(2) A procurement is usually classified according to the component which accounts for the greatest percentage of contract value. Acquisitions for supplies must be classified under the appropriate manufacturing or supply NAICS code, not under a Wholesale Trade or Retail Trade NAICS code. A concern that submits an offer or quote for a contract, order, or subcontract where the NAICS code assigned to the contract, order, or subcontract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of §121.406(b).

(c) *Multiple Award Contracts* (see definition at §125.1).

(1) For a Multiple Award Contract, the contracting officer must:

(i) Assign the solicitation a single NAICS code and corresponding size standard which best describes the principal purpose of the acquisition as set forth in paragraph (b) of this section, only if the NAICS code will also best describe the principal purpose of each order to be placed under the Multiple Award Contract. If a service NAICS code has been assigned to the Multiple Award Contract, then a service NAICS code must be assigned to the solicitation for the order, including an order for services that also requires some supplies; or

(ii) Divide the solicitation into discrete categories (such as Contract Line Item Numbers (CLINs), Special Item Numbers (SINs), Sectors, Functional Areas (FAs), or the equivalent), and assign each discrete category the single NAICS code and corresponding size standard that best describes the principal purpose of the goods or services to be acquired under that category (CLIN, SIN, Sector, FA or equivalent) as set forth in paragraph (b) of this section. A concern must meet the applicable size standard for each category (CLIN, SIN, Sector, FA or equivalent) for which it seeks an award as a small business concern.

(2)(i) The contracting officer must assign a single NAICS code for each order issued against a Multiple Award Contract. When placing an order under a Multiple Award Contract with multiple NAICS codes, the contracting officer must assign the NAICS code and corresponding size standard that best describes the principle purpose of each order. In cases like the GSA Schedule, where an agency can issue an order against multiple SINs with different NAICS codes, the contracting officer must select the single NAICS code that best represents the acquisition.

(ii) With respect to an order issued against a multiple award contract, an agency will receive small business credit for goaling only if the business concern awarded the order has represented its status as small for the underlying multiple award contract for the same NAICS code as that assigned to the order, provided recertification has not been required or occurred for the contract or order.

(d) 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.

(e) 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.

(f) 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; 75 FR 61604, Oct. 6, 2010; 76 FR 5683, Feb. 2, 2011; 76 FR 8252, Feb. 11, 2011; 78 FR 61130, Oct. 2, 2013]

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§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]

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§121.404 When is the size status of a business concern determined?

(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.

(1) With respect to Multiple Award Contracts and orders issued against a Multiple Award Contract:

(i) SBA determines size at the time of initial offer (or other formal response to a solicitation), which includes price, for a Multiple Award Contract based upon the size standard set forth in the solicitation for the Multiple Award Contract if a single NAICS codes is assigned as set forth in §121.402(c)(i)(A). If a business is small at the time of offer for the Multiple Award Contract, it is small for each order issued against the contract, unless a contracting officer requests a new size certification in connection with a specific order.

(ii) SBA determines size at the time of initial offer (or other formal response to a solicitation), which includes price, for a Multiple Award Contract based upon the size standard set forth for each discrete category (e.g., CLIN, SIN, Sector, FA or equivalent) for which a business concern submits an offer and represents it is small for the Multiple Award Contract as set forth in §121.402(c)(i)(B). If the business concern submits an offer for the entire Multiple Award Contract, SBA will determine whether it meets the size standard for each discrete category (CLIN, SIN, Sector, FA or equivalent). If a business is small at the time of offer for a discrete category on the Multiple Award Contract, it is small for each order issued against that category with the same NAICS code and corresponding size standard, unless a contracting officer requests a new size certification in connection with a specific order.

(iii) SBA will determine size at the time of initial offer (or other formal response to a solicitation), which includes price, for an order issued against a Multiple Award Contract if the contracting officer requests a new size certification for the order.

(2) With respect to "Agreements" including Blanket Purchase Agreements (BPAs) (except for BPAs issued against a GSA Schedule Contract), Basic Agreements, Basic Ordering Agreements, or any other Agreement that a contracting officer sets aside or reserves awards to any type of small business, a concern must qualify as small at the time of its initial offer (or other formal response to a solicitation), which includes price, for the Agreement. Because an Agreement is not a contract, the concern must also qualify as small for each order issued pursuant to the Agreement in order to be considered small for the order and for an agency to receive small business goaling credit for the order.

(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, where applicable, the date the SBA program office requests a formal size determination in connection with a concern that otherwise appears eligible for program certification.

(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 architect-engineering or two-step sealed bidding procurements, a concern must qualify as small as of the date that it certifies that it is small as part of its initial bid or proposal (which may or may not include price).

(g) A concern that represents itself as a small business and qualifies as small at the time of its initial offer (or other formal response to a solicitation), which includes price, is considered to be a small business throughout the life of that contract. This means that if a business concern is small at the time of initial offer for a Multiple Award Contract (see §121.1042(c) for designation of NAICS codes on a Multiple Award Contract), then it will be considered small for each order issued against the contract with the same NAICS code and size standard, unless a contracting officer requests a new size certification in connection with a specific order. 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)(i) 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.

(ii) Recertification is required:

(A) When a concern acquires or is acquired by another concern;

(B) From both the acquired concern and the acquiring concern if each has been awarded a contract as a small business; and

(C) From a joint venture when an acquired concern, acquiring concern, or merged concern is a participant in a joint venture that has been awarded a contract or order as a small business.

(3) For the purposes of contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify 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. However, a contracting officer may require a subcontracting plan if a prime contractor's size status changes from small to other than small as a result of a size recertification.

(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 and must be assigned in accordance with §§121.402(b) and (c). 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.

(4) The requirements in paragraphs (g)(1), (2), and (3) of this section apply to Multiple Award Contracts. However, if the Multiple Award Contract was set-aside for small businesses, partially set-aside for small businesses, or reserved for small business, then in the case of a contract novation, or merger or acquisition where no novation is required, where the resulting contractor is now other than small, the agency cannot count any new orders issued pursuant to the contract, from that point forward, towards its small business goals. This includes set-asides, partial set-asides, and reserves for 8(a) BD Participants, HUBZone SBCs, SDVO SBCs, and ED/WOSBs.

(5) If during contract performance a subcontractor performs primary and vital requirements of a contract, the contractor and its ostensible subcontractor will be treated as joint venturers. See §121.103(h)(4). If the two firms exceed the applicable size standard in the aggregate, the contractor cannot continue to certify as small for that contract or for any task order under that contract.

(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; 76 FR 5683, Feb. 2, 2011; 76 FR 8252, Feb. 11, 2011; 78 FR 42403, July 16, 2013; 78 FR 38817, June 28, 2013; 78 FR 61131, Oct. 2, 2013]

EDITORIAL NOTE: At 78 FR 61131, Oct. 2, 2013, §121.404(b) was amended by removing "date of certification by SBA" and adding in its place "date the Director of the Division of Program Certification and Eligibility or the Associate Administrator for Business Development requests a formal size determination in connection with a concern that is otherwise eligible for program certification."; however, the amendment could not be incorporated because those words do not exist in the paragraph.

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§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.

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§121.406 How does a small business concern qualify to provide manufactured products or other supply items under a small business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, or 8(a) contract?

(a) *General.* In order to qualify as a small business concern for a small business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, 8(a) contract, partial set-aside, reserve, or set-aside of orders against a multiple award contract to provide manufactured products or other supply items, an offeror must either:

(1) Be the manufacturer or producer 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 firm may qualify as a small business concern for a requirement to provide manufactured products or other supply items 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;

(iii) Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and

(iv) Will supply the end item of a small business manufacturer, processor or producer made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(5) 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 nonmanufacturer rule applies only to procurements that have been assigned a manufacturing or supply NAICS code. The nonmanufacturer rule does not apply to contracts that have been assigned a service, construction, or specialty trade construction NAICS code.

(4) The nonmanufacturer rule applies only to the supply component of a requirement classified as a manufacturing or supply contract. If a requirement is classified as a service contract, but also has a supply component, the nonmanufacturer rule does not apply to the supply component of the requirement.

Example 1 to paragraph (b)(4). A procuring agency seeks to acquire computer integration and maintenance services. Included within that requirement, the agency also seeks to acquire some computer hardware. If the procuring agency determines that the principal nature of the procurement is services and classifies the procurement as a services procurement, the nonmanufacturer rule does not apply to the computer hardware portion of the requirement. This means that while a contractor must meet the applicable performance of work requirement set forth in §125.6 for the services portion of the contract, the contractor does not have to supply the computer hardware of a small business manufacturer.

Example 2 to paragraph (b)(4). A procuring agency seeks to acquire computer hardware, as well as computer integration and maintenance services. If the procuring agency determines that the principal nature of the procurement is for supplies and classifies the procurement as a supply procurement, the nonmanufacturer rule applies to the computer hardware portion of the requirement. A firm seeking to qualify as a small business nonmanufacturer must supply the computer hardware manufactured by a small business. Because the requirement is classified as a supply contract, the contractor does not have to meet the performance of work requirement set forth in §125.6 for the services portion of the contract.

(5) 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.

(6) The two waiver possibilities identified in paragraph (b)(5) of this section are called "individual" and "class" waivers respectively, and the procedures for requesting and granting them are contained in §121.1204.

(7) 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 and Orders Set-Aside Against Full and Openly Competed Multiple Award Contracts.* Where the procurement of supplies or manufactured items is processed under Simplified Acquisition Procedures as defined in FAR 13.101 (48 CFR 13.101), or an order for supplies or manufactured items is set-aside against a full and openly competed multiple award contract, and the anticipated cost will not exceed \$25,000, the offeror does not have to supply the end product of a small business concern. However, the product acquired must be manufactured or produced in the United States, and the small business offeror must meet the requirements of paragraph (b)(1)(i) through (b)(1)(iv) of this section. 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; 76 FR 8252, Feb. 11, 2011; 78 FR 61132, Oct. 2, 2013]

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§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.

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§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.

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§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]

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§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 code 541330.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004; 74 FR 46313, Sept. 9, 2009]

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§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 System for Award Management (SAM) (or any successor system or equivalent database 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.

(b) Even if 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. Prime contractors may accept a subcontractor's electronic self-certifications as to size, if the subcontract contains a clause which provides that the subcontractor verifies by submission of the offer that the size or socioeconomic representations and certifications made in SAM (or any successor system) are current, accurate and complete as of the date of the offer for the subcontract. Prime contractors or subcontractors may not require the use of SAM (or any successor system) for purposes of representing size or socioeconomic status in connection with a subcontract.

(c) 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.

(d) 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.

(e) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise

classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(f) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small business size and status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small business concern.

(g) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the size status claimed by the concern.

(h) *Limitation of Liability.* Paragraphs (d) through (f) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of size was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' size. Relevant factors to consider in making this determination may include the firm's internal management procedures governing size representation or certification, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as small without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(i) *Penalties for Misrepresentation.* (1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's size status pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729-3733, and under the Program Fraud Civil Remedies Act, 331 U.S.C. 3801-3812, and any other applicable laws.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29205, May 21, 2004; 78 FR 42403, July 16, 2013; 78 FR 38817, June 28, 2013; 79 FR 29661, May 23, 2014]

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§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.

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SIZE ELIGIBILITY REQUIREMENTS FOR SALES OR LEASE OF GOVERNMENT PROPERTY

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§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.

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§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 \$7.5 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; 73 FR 41254, July 18, 2008; 79 FR 33669, June 12, 2014]

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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 \$62.5 million.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 3056, Jan. 23, 2002; 70 FR 72594, Dec. 6, 2005; 73 FR 41254, July 18, 2008; 79 FR 33669, June 12, 2014]

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SIZE ELIGIBILITY REQUIREMENTS FOR THE 8(a) BUSINESS DEVELOPMENT PROGRAM

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§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]

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§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]

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§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]

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§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]

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SIZE AND ELIGIBILITY REQUIREMENTS FOR THE SMALL BUSINESS INNOVATION RESEARCH (SBIR) AND SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAMS

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§121.701 What SBIR and STTR programs are subject to size and eligibility determinations and what definitions are important?

(a) These sections apply to SBA's SBIR and STTR programs, 15 U.S.C. 638.

(b) *Definitions*—(1) *Funding agreement officer* means a contracting officer, a grants officer, or a cooperative agreement officer.

(2) *Funding agreement* means any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the purposes of the SBIR or STTR program.

(3) *Hedge fund* has the meaning given that term in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)). The hedge fund must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

(4) *Portfolio company* means any company that is owned in whole or part by a venture capital operating company, hedge fund, or private equity firm.

(5) *Private equity firm* has the meaning given the term "private equity fund" in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)). The private equity firm must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

(6) *Venture capital operating company* means an entity described in §121.103(b)(5)(i), (v), or (vi). The venture capital operating company must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

[77 FR 76225, Dec. 27, 2012]

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§121.702 What size and eligibility standards are applicable to the SBIR and STTR programs?

To be eligible for award of funding agreements in SBA's SBIR and STTR programs, a business concern must meet the requirements below at the time of award of an SBIR or STTR Phase I or Phase II funding agreement:

(a) *Ownership and control for the SBIR program.* (1) An SBIR awardee must:

(i) Be a concern which is more than 50% directly owned and controlled by one or more individuals (who are citizens or permanent resident aliens of the United States), other small business concerns (each of which is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States), or any combination of these;

(ii) Be a concern which is more than 50% owned by multiple venture capital operating companies, hedge funds, private equity firms, or any combination of these (for agencies electing to use the authority in 15 U.S.C. 638(dd)(1)); or

(iii) Be a joint venture in which each entity to the joint venture must meet the requirements set forth in paragraph (a)(1)(i) or (a)(1)(ii) of this section. A joint venture that includes one or more concerns that meet the requirements of paragraph (a)(1)(ii) of this section must comply with §121.705(b) concerning registration and proposal requirements.

(2) No single venture capital operating company, hedge fund, or private equity firm may own more than 50% of the concern.

(3) If an Employee Stock Ownership Plan owns all or part of the concern, each stock trustee and plan member is considered an owner.

(4) If a trust owns all or part of the concern, each trustee and trust beneficiary is considered an owner.

(b) *Ownership and control for the STTR program.* (1) An STTR awardee must:

(i) Be a concern which is more than 50% directly owned and controlled by one or more individuals (who are citizens or permanent resident aliens of the United States), other small business concerns (each of which is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States), or any combination of these; or

(ii) Be a joint venture in which each entity to the joint venture must meet the requirements set forth in paragraph (b)(1)(i) of this section.

(2) If an Employee Stock Ownership Plan owns all or part of the concern, each stock trustee and plan member is considered an owner.

(3) If a trust owns all or part of the concern, each trustee and trust beneficiary is considered an owner.

(c) *Size and affiliation.* An SBIR or STTR awardee, together with its affiliates, must not have more than 500 employees. Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. For the purposes of the SBIR and STTR programs, the following bases of affiliation apply:

(1) *Affiliation based on ownership.* For determining affiliation based on equity ownership, a concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50 percent of the concern's voting equity. However, SBA may find a concern an affiliate of an individual, concern, or entity that owns or has the power to control 40% or more of the voting equity based upon the totality of circumstances. If no individual, concern, or entity is found to

control, SBA will deem the Board of Directors to be in control of the concern.

(2) *Affiliation arising under stock options, convertible securities, and agreements to merge.* 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.

(i) 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.

(ii) 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.

(iii) 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.

(3) *Affiliation based on common management.* Affiliation arises where the CEO or President of a concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single individual, concern, or entity that controls the board of directors of one concern also controls the board of directors or management of one or more other concerns.

(4) *Affiliation based on identity of interest.* Affiliation may arise among two or more persons (including any individual, concern or other entity) with an identity of interest. An individual, concern or entity may rebut a determination of identity of interest with evidence showing that the interests deemed to be one are in fact separate.

(i) SBA may presume an identity of interest between family members with identical or substantially identical business or economic interests (such as where the family members operate concerns in the same or similar industry in the same geographic area).

(ii) SBA may presume an identity of interest based upon economic dependence if the SBIR/STTR awardee relies upon another concern or entity for 70% or more of its receipts.

(iii) An SBIR or STTR awardee is not affiliated with a portfolio company of a venture capital operating company, hedge fund, or private equity firm, solely on the basis of one or more shared investors, though affiliation may be found for other reasons.

(5) *Affiliation based on the newly organized concern rule.* Affiliation may arise where former or current officers, directors, principal stockholders, managing members, general partners, 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, general partners, 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. A concern will be considered "new" for the purpose of this rule if it has been actively operating continuously for less than one year.

(6) *Affiliation based on joint ventures.* Concerns submitting an application as a joint venture are affiliated with each other with regard to the application. SBA will apply the joint venture affiliation exception at §121.103(h)(3)(iii) for two firms approved to be a mentor and protégé under SBA's 8(a) program.

(7) *Affiliation based on the ostensible subcontractor rule.* A concern and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor or subgrantee that performs primary and vital requirements of a funding agreement (*i.e.*, those requirements associated with the principal purpose of the funding agreement), or a subcontractor or subgrantee upon which the concern is unusually reliant. All aspects of the relationship between the concern and subcontractor are considered, including, but not limited to, the terms of the proposal (such as management, technical responsibilities, and the percentage of subcontracted work) and agreements between the concern and subcontractor or subgrantee (such as bonding assistance or the teaming agreement). To determine whether a subcontractor performs primary and vital requirements of a funding agreement, SBA will consider whether the concern's proposal complies with the performance requirements of the SBIR or STTR program.

(8) *Affiliation based on license agreements.* SBA will consider whether there is a license agreement concerning a

product or trademark which is critical to operation of the licensee. The license agreement will not cause the licensor to be affiliated with the licensee if the licensee has the right to profit from its efforts and bears the risk of loss. Affiliation may arise, however, through other means, such as common ownership or common management.

(9) *Exception to affiliation for portfolio companies.* If a venture capital operating company, hedge fund, or private equity firm that is determined to be affiliated with an awardee is a minority investor in the awardee, the awardee is not affiliated with a portfolio company of the venture capital operating company, hedge fund, or private equity firm, unless:

(i) The venture capital operating company, hedge fund, or private equity firm owns a majority of the portfolio company; or

(ii) The venture capital operating company, hedge fund, or private equity firms holds a majority of the seats of the board of directors of the portfolio company.

(10) *Totality of the circumstances.* In determining whether affiliation exists, SBA may consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(d) *Calculating ownership and control.* SBA will review the small business' equity ownership on a fully diluted basis for purposes of determining ownership, control and affiliation in the SBIR and STTR programs. This means that SBA will consider the total number of shares or equity that would be outstanding if all possible sources of conversion were exercised, including, but not limited to: Outstanding common stock or equity, outstanding preferred stock (on a converted to common basis) or equity, outstanding warrants (on an as exercised and converted to common basis), outstanding options and options reserved for future grants, and any other convertible securities on an as converted to common basis.

[77 FR 76225, Dec. 27, 2012; 78 FR 11745, Feb. 20, 2013]

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§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.

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§121.704 When does SBA determine the size and eligibility status of a business concern?

(a) The size and eligibility status of a concern for the purpose of a funding agreement award under the SBIR and STTR programs is determined at the time of award for both Phase I and Phase II SBIR and STTR awards, or on the date of the request for a size determination, if an award is pending.

(b) A concern that qualified as a small business at the time it receives an SBIR or STTR funding agreement is considered a small business throughout the life of that specific funding agreement. Where a concern grows to be other than small, the funding agreement agency may exercise the options on the award that is a contract, grant or cooperative agreement or issue a continuation on a grant or cooperative agreement and still count the award as an award to a small business under the SBIR or STTR program. However, the following exceptions apply:

(1) In the case of a merger or acquisition, the awardee must, within 30 days of the transaction becoming final (or the approved funding agreement novation if a novation is required), recertify its small business size status to the funding agreement agency or inform the funding agreement agency that it is other than small. If the awardee is other than small, the agency can no longer fund the options or issue a continuation pursuant to the funding agreement, from that point forward, with SBIR or STTR funds. Funding agreement novations for reasons other than a merger or acquisition do not necessarily require re-certification. The funding agreement agency and the awardee must immediately revise all applicable Federal contract and grant databases to reflect the new size status from that point forward.

(2) For the purposes of SBIR and STTR funding agreements with durations of more than five years, a funding agreement 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 funding agreement, and no more than 120 days prior to exercising any option or issuing any continuation. If the awardee certifies that it is other than small, the funding agreement agency can no longer fund the options or issue a continuation pursuant to the funding agreement with SBIR or STTR funds. The funding agreement agency and the awardee must immediately revise all applicable Federal contract and grant databases to reflect the new size status from that point forward.

(c) Re-certification does not change the terms and conditions of the funding agreement. The requirements in effect at

the time of award remain in effect throughout the life of the funding agreement.

(d) A request for a size re-certification shall include the size standard in effect at the time of re-certification.

[77 FR 76226, Dec. 27, 2012]

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§121.705 Must a business concern self-certify its size and eligibility status?

(a) A business concern must self-certify that it meets the eligibility requirements set forth in §121.702 for a Phase I or Phase II SBIR or STTR funding agreement.

(b) A business concern that is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms and a joint venture where one or more parties to the joint venture is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms must be registered with SBA as of the date it submits its initial proposal (or other formal response) to a Phase I or Phase II SBIR announcement or solicitation. The concern must indicate in any SBIR proposal or application that it is registered with SBA as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(c) A small business concern that did not meet the requirements of paragraph (b) of this section at the time of its SBIR proposal or application must notify the funding agreement officer if, on the date of award, the concern is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(1) The concern is still eligible to receive the award if it becomes majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms after the time it submitted its initial proposal (or other formal response) to a Phase I or Phase II SBIR announcement or solicitation if the agency makes the award on or after the date that is 9 months from the end of the period for submitting applications under the SBIR solicitation.

(2) This small business, known as a covered small business concern, would have to certify that it meets the requirements of the SBIR program set forth in §§121.702(a)(1)(ii) or 121.702(a)(1)(iii), and 121.702(a)(2) and 121.702(c) at the time of award of the funding agreement.

(d) 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 or other credible information which would cause the funding agreement officer or SBA to question the size or eligibility of the concern.

(e) Procedures for protesting an awardee's self-certification are set forth in §§121.1001 through 121.1009. In adjudicating a protest, SBA may address both the size status and eligibility of the SBIR or STTR awardee.

[77 FR 76227, Dec. 27, 2012]

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SIZE ELIGIBILITY REQUIREMENTS FOR PAYING REDUCED PATENT FEES

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§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.

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§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.

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§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.

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§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.

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§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.

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SIZE ELIGIBILITY REQUIREMENTS FOR COMPLIANCE WITH PROGRAMS OF OTHER AGENCIES

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§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.

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§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]

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§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 rulemaking 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]

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§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]

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PROCEDURES FOR SIZE PROTESTS AND REQUESTS FOR FORMAL SIZE DETERMINATIONS

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§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 businesses or a particular group of small businesses (including a partial set-aside), 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 Associate Administrator for 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 and Small Business Technology Transfer (STTR) program, the following entities may protest:

(i) An offeror or applicant for that solicitation;

(ii) The funding agreement officer; and

(iii) The responsible SBA Government Contracting Area Director; the Director, Office of Government Contracting; or the Associate Administrator, Investment Division.

(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 Associate Administrator for 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 Associate Administrator for 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.

(9) For SBA's WOSB Federal Contracting Program, the following entities may protest:

(i) Any concern that submits an offer for a specific requirement set aside for WOSBs or WOSBs owned by one or more women who are economically disadvantaged (EDWOSB) pursuant to part 127 of this chapter;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director; and

(iv) The Director for 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 Director of the Division of Program Certification and Eligibility or the Associate Administrator for 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 Associate Administrator for 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 Director of the Division of Program Certification and Eligibility or the Associate Administrator for 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 other purposes related to protecting the integrity of the Federal procurement process, including validating that firms listed in the System for Award Management 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.

(10) For purposes of determining compliance with small business requirements for firms relying upon small business status advisory opinions, the Associate General Counsel, Office of Procurement Law may request a formal size determination. Additionally, any firm that is the subject of a small business status advisory opinion holding that it is other than small may request a formal size determination.

(11) The SBA Inspector General may request a formal size determination with respect to any of the programs identified in paragraph (b) of this section.

[61 FR 3286, Jan. 31, 1996, as amended at 63 FR 31907, June 11, 1998; 63 FR 35739, June 30, 1998; 69 FR 25266, May 5, 2004; 69 FR 29206, May 21, 2004; 69 FR 29420, May 24, 2004; 69 FR 44461, July 26, 2004; 73 FR 56947, Oct. 1, 2008; 74 FR 45753, Sept. 4, 2009; 75 FR 62280, Oct. 7, 2010; 76 FR 8253, Feb. 11, 2011; 77 FR 76227, Dec. 27, 2012; 78 FR 61132, Oct. 2, 2013; 80 FR 7536, Feb. 11, 2015]

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§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.

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§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.

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§121.1004 What time limits apply to size protests?

(a) *Protests by entities other than contracting officers or SBA—(1) Sealed bids or sales (including protests on partial set-asides and reserves of Multiple Award Contracts and set-asides of orders against Multiple Award Contracts).* 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 opening for

(i) The contract; or

(ii) An order issued against a Multiple Award Contract if the contracting officer requested a new size certification in connection with that order.

(2) *Negotiated procurement (including protests on partial set-asides and reserves of Multiple Award Contracts and set-asides of orders against Multiple Award Contracts).* 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 for

(i) The contract; or

(ii) An order issued against a Multiple Award Contract if the contracting officer requested a new size certification in connection with that order.

(3) *Long-Term Contracts.* For contracts with durations greater than five years (including options), including all existing long-term contracts, Multi-agency contracts, Governmentwide Acquisition Contracts and Multiple Award Contracts:

(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, funding agreement officers or SBA.* The time limitations in paragraph (a) of this section do not apply to contracting officers, funding agreement officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (e) of this section, including for purposes of the SBIR and STTR programs. Notwithstanding paragraph (e), for purposes of the SBIR and STTR programs the funding agreement officer or SBA may file a protest in anticipation of an 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; 77 FR 76227, Dec. 27, 2012; 78 FR 61132, Oct. 2, 2013]

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§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]

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§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.

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§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]

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§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 set aside for WOSBs or EDWOSBs, the Area Director will also notify SBA's Director for Government Contracting of the protest. If the protest pertains to a requirement involving SBA's SBIR or STTR programs, the Area Director will also notify the Associate Administrator, Investment Division. If the protest involves the size status of an SDB concern (see part 124, subpart B of this chapter) the Area Director will notify SBA's Associate Administrator for 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; 73 FR 56948, Oct. 1, 2008; 74 FR 45753, Sept. 4, 2009; 75 FR 62280, Oct. 7, 2010; 77 FR 76227, Dec. 27, 2012]

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§121.1009 What are the procedures for making the size determination?

(a) *Time frame for making size determination.* (1) After receipt of a protest or a request for a formal size determination, the SBA Area Office will issue a formal size determination within 15 business days, if possible.

(2) The contracting officer may award a contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest. Notwithstanding such a determination, the provisions of paragraph (g) of this section apply to the procurement in question.

(3) If SBA does not issue its determination within 15 business days (or request an extension that is granted), the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. Notwithstanding such a determination, the provisions of paragraph (g) of this section apply to the procurement in question.

(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 concern. SBA will send the notification by verifiable means, which may include facsimile, electronic mail, or overnight delivery service.

(g) *Results of an SBA Size Determination.* (1) A contracting officer may award a contract to a protested concern after the SBA Area Office has determined either that the protested concern is an eligible small business or has dismissed all protests against it. If OHA subsequently overturns the Area Office's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) A contracting officer shall not award a contract to a protested concern that the Area Office has determined is not an eligible small business for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no OHA appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely OHA appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If OHA affirms the size determination finding the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(3) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency size decision (the formal size determination if no appeal is filed or the appellate decision).

(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.* SBA may, in its sole discretion, reopen a formal size determination to correct an error or mistake, provided it is within the appeal period and no appeal has been filed with OHA. Once the agency has issued a final decision (either a formal size determination that is not timely appealed or an appellate decision), SBA cannot re-open the size determination.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 47245, July 18, 2002; 69 FR 29207, May 21, 2004; 76 FR 5683, Feb. 2, 2011; 78 FR 38818, June 28, 2013]

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§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.

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APPEALS OF SIZE DETERMINATIONS AND NAICS CODE DESIGNATIONS

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§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 review all timely appeals of size determinations.

[69 FR 29207, May 21, 2004, as amended at 76 FR 5683, Feb. 2, 2011]

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§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]

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§121.1103 What are the procedures for appealing a NAICS code or size standard designation?

(a)(1) Any interested party adversely affected by a NAICS code designation may appeal the designation to OHA. An interested party would include a business concern seeking to change the NAICS code designation in order to be considered a small business for the challenged procurement, regardless of whether the procurement is reserved for small businesses or unrestricted. 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 Associate Administrator for Business Development may appeal the NAICS code designation.

(2) A NAICS code appeal may include an appeal involving the applicable size standard, such as where more than one size standard corresponds to the selected NAICS code, or a question relating to the size standard in effect at the time the solicitation was issued or amended.

(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 or size standard designation must be served and filed within 10 calendar days after the issuance of the solicitation or amendment affecting the NAICS code or size standard. However, SBA may file a NAICS code appeal at any time before offers are due. 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.

(c) *Procedure after a NAICS code appeal is filed and served.* (1) Upon receipt of the service copy of a NAICS code appeal, the contracting officer shall:

(i) Stay the solicitation;

(ii) Advise the public, by amendment to the solicitation or other method, of the existence of the NAICS code appeal and the procedures and deadline for interested parties to file and serve arguments concerning the appeal;

(iii) Send a copy of (or an electronic link to) the entire solicitation, including amendments, to OHA;

(iv) File and serve any response to the appeal prior to the close of the record; and

(v) Inform OHA of any amendments, actions or developments concerning the procurement in question.

(2) Upon receipt of a NAICS code appeal, OHA shall:

(i) Notify the appellant, the contracting officer, the SBA and any other known party of the date OHA received the appeal and the date the record will close; and

(ii) Conduct the appeal in accordance with part 134 of this chapter.

(3) Any interested party may file and serve its response to the NAICS code appeal.

[69 FR 29207, May 21, 2004; 74 FR 45753, Sept. 4, 2009, as amended at 76 FR 5683, Feb. 2, 2011; 78 FR 61132, Oct. 2, 2013]

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Subpart B—Other Applicable Provisions

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WAIVERS OF THE NONMANUFACTURER RULE FOR CLASSES OF PRODUCTS AND INDIVIDUAL CONTRACTS

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§121.1201 What is the Nonmanufacturer Rule?

The Nonmanufacturer Rule is set forth in §121.406(b).

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§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 routes, 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]

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§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.

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§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 or orders 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; 78 FR 61132, Oct. 2, 2013]

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§121.1205 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers for the Nonmanufacturer Rule have been granted is maintained in SBA Web site at: http://www.sba.gov/aboutsba/sbaprograms/gc/programs/gc_waivers_nonmanufacturer.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, as amended at 74 FR 46313, Sept. 9, 2009]

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Need assistance?

