

## § 121.503

(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; 84 FR 34281, July 18, 2019]

### § 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.

### § 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.

### § 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.

### § 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

## 13 CFR Ch. I (1-1-21 Edition)

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.

### § 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

## Small Business Administration

## § 121.512

(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.

### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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 \$67.5 million.

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