

§ 121.109

13 CFR Ch. I (1–1–25 Edition)

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; 81 FR 31491, May 19, 2016]

§ 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

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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.

unless and until the firm recertifies its size.

[80 FR 7536, Feb. 11, 2015]

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

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

SIZE STANDARDS USED TO DEFINE SMALL BUSINESS CONCERNS

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

(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.

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.

(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,

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	\$2.25	
111120	Oilseed (except Soybean) Farming	\$2.25	
111130	Dry Pea and Bean Farming	\$2.75	
111140	Wheat Farming	\$2.25	
111150	Corn Farming	\$2.5	
111160	Rice Farming	\$2.5	
111191	Oilseed and Grain Combination Farming	\$2.25	
111199	All Other Grain Farming	\$2.25	
11211	Potato Farming	\$4.25	
11219	Other Vegetable (except Potato) and Melon Farming	\$3.75	
11310	Orange Groves	\$4.0	
11320	Citrus (except Orange) Groves	\$4.25	
11331	Apple Orchards	\$4.5	
11332	Grape Vineyards	\$4.0	
11333	Strawberry Farming	\$5.5	
11334	Berry (except Strawberry) Farming	\$3.75	
11335	Tree Nut Farming	\$3.75	
11336	Fruit and Tree Nut Combination Farming	\$5.0	
11339	Other Noncitrus Fruit Farming	\$3.5	
11411	Mushroom Production	\$4.5	
11419	Other Food Crops Grown Under Cover	\$4.5	
11421	Nursery and Tree Production	\$3.25	
11422	Floriculture Production	\$3.75	
11910	Tobacco Farming	\$2.5	
11920	Cotton Farming	\$3.25	
11930	Sugarcane Farming	\$5.0	
11940	Hay Farming	\$2.5	
11991	Sugar Beet Farming	\$2.5	
11992	Peanut Farming	\$2.5	
11998	All Other Miscellaneous Crop Farming	\$2.5	
Subsector 112—Animal Production and Aquaculture			
11211	Beef Cattle Ranching and Farming	\$2.5	
11212	Cattle Feedlots	\$22.0	
11220	Dairy Cattle and Milk Production	\$3.75	