

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.

(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.

§ 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]

§ 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.

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

In addition to other laws which may be applicable, section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs. Section 16(a) of the Act also provides, in

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part, for criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing in any way the actions of the Agency.

SIZE STANDARDS USED TO DEFINE SMALL BUSINESS CONCERNS

§ 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 un-

less 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 | | | |
| 11110 | 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 | Corn Farming | \$0.75 | |
| 111160 | Rice Farming | \$0.75 | |
| 111191 | Oilseed and Grain Combination Farming | \$0.75 | |
| 111199 | All Other Grain Farming | \$0.75 | |
| 11211 | Potato Farming | \$0.75 | |
| 11219 | Other Vegetable (except Potato) and Melon Farming | \$0.75 | |
| 11310 | Orange Groves | \$0.75 | |
| 11320 | Citrus (except Orange) Groves | \$0.75 | |
| 11331 | Apple Orchards | \$0.75 | |
| 11332 | Grape Vineyards | \$0.75 | |
| 11333 | Strawberry Farming | \$0.75 | |
| 11334 | Berry (except Strawberry) Farming | \$0.75 | |
| 11335 | Tree Nut Farming | \$0.75 | |
| 11336 | Fruit and Tree Nut Combination Farming | \$0.75 | |
| 11339 | Other Noncitrus Fruit Farming | \$0.75 | |
| 11411 | Mushroom Production | \$0.75 | |
| 11419 | Other Food Crops Grown Under Cover | \$0.75 | |
| 11421 | Nursery and Tree Production | \$0.75 | |
| 11422 | Floriculture Production | \$0.75 | |
| 11910 | Tobacco Farming | \$0.75 | |
| 11920 | Cotton Farming | \$0.75 | |
| 11930 | Sugarcane Farming | \$0.75 | |
| 11940 | Hay Farming | \$0.75 | |
| 11991 | Sugar Beet Farming | \$0.75 | |
| 11992 | Peanut Farming | \$0.75 | |
| 11998 | All Other Miscellaneous Crop Farming | \$0.75 | |
| Subsector 112—Animal Production | | | |
| 11211 | Beef Cattle Ranching and Farming | \$0.75 | |
| 11212 | Cattle Feedlots | \$1.50 | |
| 112120 | Dairy Cattle and Milk Production | \$0.75 | |
| 112210 | Hog and Pig Farming | \$0.75 | |
| 112310 | Chicken Egg Production | \$10.50 | |
| 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 Animal Aquaculture | \$0.75 | |
| 112910 | Apiculture | \$0.75 | |