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for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker.

(2) *Completed fiscal year* means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.

(3) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

(b) *Period of measurement.* (1) Annual receipts of a concern which has been in business for 3 or more completed fiscal years means the receipts of the concern over its last 3 completed fiscal years divided by three.

(2) Annual receipts of a concern which has been in business for less than 3 complete fiscal years means the receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Annual receipts of a concern which has been in business 3 or more complete fiscal years but has a short year as one of those years means the receipts for the short year and the two full fiscal years divided by the number of weeks in the short year and the two full fiscal years, multiplied by 52.

(c) *Use of information other than the Federal tax return.* Where other information gives SBA reason to regard Federal Income Tax returns as false, SBA may base its size determination on such other information.

(d) *Annual receipts of affiliates.* (1) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period or before small business self-certification, the annual receipts in determining size status include the receipts of both firms. Furthermore, this aggregation applies for the entire applicable period used in computing size rather than only for the period after the affiliation arose. Receipts are determined for the concern and its affiliates in accordance with paragraph (b) of this section even though this may result in different periods being used to calculate annual receipts.

(2) The annual receipts of a former affiliate are not included as annual receipts if affiliation ceased before the date used for determining size. This ex-

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clusion of annual receipts of a former affiliate applies during the entire period used in computing size, rather than only for the period after which the affiliation ceased .

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 48604, Aug. 9, 2000]

§ 121.105 How does SBA define “business concern or concern”?

(a) 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.

(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) Employees counted in determining size include all individuals employed on a full-time, part-time, temporary, or other basis. SBA will consider the totality of the circumstances, including factors relevant for tax purposes, in determining whether individuals are employees of the concern in question.

(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

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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) The treatment of employees of former affiliates or recently acquired affiliates is the same as for size determinations using annual receipts in §121.104(d).

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 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

§121.107 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.

§ 121.201 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.

§ 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

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	Description (N.E.C.=Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
Sector 11—Agriculture, Forestry and Fishing		
Subsector 111—Crop Production		
111110	Soybean Farming	\$0.5
111120	Oilseed (except Soybean) Farming	\$0.5
111130	Dry Pea and Bean Farming	\$0.5
111140	Wheat Farming	\$0.5
111150	Corn Farming	\$0.5
111160	Rice Farming	\$0.5
111191	Oilseed and Grain Combination Farming	\$0.5
111199	All Other Grain Farming	\$0.5
111211	Potato Farming	\$0.5
111219	Other Vegetable (except Potato) and Melon Farming	\$0.5
111310	Orange Groves	\$0.5
111320	Citrus (except Orange) Groves	\$0.5
111331	Apple Orchards	\$0.5
111332	Grape Vineyards	\$0.5
111333	Strawberry Farming	\$0.5
111334	Berry (except Strawberry) Farming	\$0.5
111335	Tree Nut Farming	\$0.5
111336	Fruit and Tree Nut Combination Farming	\$0.5
111339	Other Noncitrus Fruit Farming	\$0.5