

§ 121.302

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million, except as provided in § 121.301(d)(3).

(2) Any concern not specified in paragraph (d)(1) of this section must meet the size standard for the primary industry in which it, combined with its affiliates, is engaged.

(3) For any contract or subcontract, public or private, to be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita or Wilma, a construction (general or special trade) concern or concern performing a contract for services is small if, together with its affiliates, it meets the size standard for the primary industry in which it, together with its affiliates, is engaged, or if it meets the size standard set forth in paragraph (d)(1), whichever is higher.

(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]

§ 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 economic injury disaster loan assistance under

disaster declarations for Hurricanes Katrina, Rita, and Wilma, size status is determined as of the date SBA accepts the application for processing, and for applications submitted before December 6, 2005, whether denied because of size status or pending, such applications shall be deemed resubmitted on December 6, 2005. 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]

§ 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.