Revision 13
(Includes amendments
1 thru 35)

PART 121
SBA RULES AND REGULATIONS

FILING INSTRUCTIONS: Remove and destroy the entire Part 121 and all amendments (1 thru 35). Insert this new Part 121 immediately following Part 120 and amendments thereto.

This Part 121, Revision 13, has been reprinted to incorporate amendments 1 thru 35. It is organized in a way that permits future amendments to be incorporated into the body of text by the substitution or revised pages, or, if changes are minor, by pen and ink changes. As changes are made, pages will contain the date of issuance so as to permit verfication of the currency of pages from time to time.

Thus, readers can at all times have a continuous text without having to refer to seperate, and often extremely difficult to assimilate, amendments in order to have a complete regulation.

Consolidated: August 1, 1980

PART 121—SMALL BUSINESS SIZE STANDARDS

AUTHORITY: Pub. L. 85-536, sec. 5(b)6, 73 Stat. 385.

SOURCE: Rev. 13, 39 FR 44424, Dec. 24, 1974, unless otherwise noted.

§ 121.3 Statutory provisions.

(a) Small Business Act, as amended.

SEC. 3. For the purpose of this Act, a small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria, the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees, and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees that a small business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

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SEC. 8(b) It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

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(6) To determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose, the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small business concern." Offices of the Government having procurement or lending powers, or engaged in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small business concerns," as authorized and directed under this paragraph.

(b) Small Business Investment Act of 1958, as amended.

SEC. 103. As used in this Act—

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(5) The term "small business concern" shall have the same meaning as in the "Small Business Act."

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§ 121.3-1 Purpose and method of establishing size standards.

(a) Purpose. This part defines "small business concerns" and establishes standards, criteria, and procedures to determine which concerns are "small business concerns" within the meaning of the Small Business Act, as amended (hereinafter referred to as the "Act")

and the Small Business Investment Act of 1958, as amended (hereinafter referred to as the "Investment Act").

(b) Method of establishing size standards—(1) Use of Standard Industrial Classification Manual. The Standard Industrial Classification (SIC) Manual, as amended, prepared and published by the Bureau of the Budget (now Office of Management and Budget), Executive Office of the President, will be used by SBA as a guide in defining industries. Its use therefore is advisory and not mandatory.

(2) Size standards policy. (i) The fundamental purpose of Small Business Administration assistance is to preserve free competitive enterprise by strengthening the competitive position of small business concerns.

(ii) It is the Small Business Administration's view that, in the absence of proof to the contrary, there is a segment of each industry wherein concerns by reason of their small size are at a competitive disadvantage. Therefore, the definition of small business for each industry should be limited to that segment of the industry struggling to become or remain competitive.

(iii) Smaller concerns often are forced to compete with middle-sized as compared with very large concerns. In consideration of this fact, the standard for each industry should be established as low as reasonably possible. It should be lowered in any case where the SBA determines that a few concerns under the size standard umbrella have, because of their size, gained undue competitive strength as compared with other concerns under the umbrella.

(iv) It is the Small Business Administration's view that concerns which, with or without assistance under the Small Business Act, have grown to a size which exceeds the applicable small business size standard should compete for Government contracts not reserved for small business concerns or should seek commercial markets in the same or related fields. Under such circumstances small business concerns should not rely on continuing assistance under the Small Business Act from the cradle to the grave but should plan for the day on which they become other than small business and should be able to compete without assistance.

(3) Factors in formulating size standards. The following factors shall be considered in formulating industry size standards:

(i) Concentration of output; that is, the portion of the total output of an industry which is accounted for by a limited number of companies.

(ii) Coverage ratio, that is, the ratio of the industry's shipments of its primary products, to the total shipments by all industries of the primary products of the industry in question.

(iii) Specialization ratio, that is, the ratio of the industry's shipments of its primary products to its total shipments of primary and secondary products.

(iv) The total number of concerns in the industry.

(v) The size of industry leaders.

(vi) The SBA programs for which the size standard is established. In formulating industry size standards for the purpose of Government procurement, the additional factor of Government procurement history shall be used. The use of this additional factor may cause the size standards for the purpose of Government procurement and the size standards for the purpose of financial assistance to differ for the same industry.

(4) Product classification. For size standard purposes, a product or service shall be classified into only one industry, even though, for other purposes, it could be classified into more than one industry. In determining the SIC Industry into which particular products shall be classified for size standard purposes, consideration shall be given to all appropriate factors including:

(i) Alphabetic indexes published by the Office of Management and Budget, Executive Office of the President; Bureau of the Census; and the Bureau of Domestic Commerce.

(ii) Description of the product under consideration.

(iii) Previous Government procurements for the same or similar products, and

(iv) Published information concerning the nature of companies which manufacture such products.

A product or service shall be classified in the industry whose definition best describes the principal nature of the product or service being procured. The end use of a product does not govern the industry into which it is to be classified. In a borderline situation, the product or service shall be classified in the indutry

whose size standard would best serve to accomplish the purposes of the Small Business Act. When a procurement is for two or more items with different size standards, a bidder must qualify as a small business under the definition of a small business applicable to any item on which it bids. If a multi-item procurement requires the successful bidder to deliver all items and/or perform all services being procured, the applicable size standard is that for the industry whose products or services account for the greatest proportion of the contract price.

(5) Product classification decision. The SBA Regional Director or his delegatee of the SBA Region in which the principal office of the applicant, not including its affiliates, is located, shall determine the appropriate SIC classification, except that for procurement purposes the determination shall be made by the official specified in § 121.3-8, and for lease guarantee reinsurance purposes the determination shall be made by the Associate Administrator for Finance and Investment. Such determination shall be subject to appeal in the manner provided in § 121.3-6.

§ 121.3-2 Definition of terms used in this part.

(a) Affiliates: Concerns, other than investment companies licensed, or state development companies qualifying under the Small Business Investment Act of 1958 and the regulations issued pursuant thereto, or investment companies registered under the Investment Company Act of 1940, are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other, or (2) a third party or parties controls or has the power to control both In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership common management, and contractual relationships: *Provided, however,* That restraints imposed on a franchise by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure. Where a concern is a subcontractor pursuant to section 8(a)(2) of the Small Business Act and, in connection therewith, is the subject of a divestiture agreement approved by SBA for the benefit of socially or economically disadvantaged individuals, the receipts, employment, and other factors of the concern attributable to the section 8(a)(2) subcontract shall not be included in determining the size of either concern during the term of such divestiture agreement. Other contracts and business of such subcontractor may also be excluded in determining the size if, in the judgment of SBA, substantial beneficiaries of such other contracts and business will be the socially or economically disadvantaged individuals in question.

(i) Nature of Control. Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

EXAMPLE A party owning 50 percent of the voting stock of a concern would have negative power to control such concern since he can block any action of the other stockholders. Also, the bylaws of a corporation may be drawn up in such a manner which would permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties have the power to control a concern while at the same time another party, or other parties, may be in control of the concern at the will of the party or parties with the power to control.

(ii) Meaning of "party or parties." The term "party or parties" includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(iii) Control through stock ownership.

(*a*) A party is considered to control or have the power to control a concern if he controls or has the power to control 50 percent or more of its voting stock.

(*b*) A party is considered to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock if the block

of stock he owns, controls, or has the power to control is large as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control less than 50 percent of the voting stock of a concern and such minority block is (1) equal or substantially equal in size, and (2) large as compared with any other block outstanding, there is a presumption that each of such parties controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(c) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

EXAMPLE. In a corporation where the officers and directors own various size blocks of stock totalling 40 percent of a concern's voting stock, but no officer or director has a block sufficient to give him control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control.

(iv) Stock options, convertible debentures, and agreements to merge. Stock options and convertible debentures exercisable at the time of or within a relatively short time after a size determination and agreements to merge in the future are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised prior to the date of the determination.

EXAMPLE. If, on the date of the determination, company "A" holds an option to purchase a controlling interest in company "B" and such option can be exercised at any time by company "A," the situation is treated as though company "A" had exercised its rights and had become owner of a controlling interest in company "B" prior to the determination. Further, if, as of the date of a determination, company "A" has entered into an agreement to merge with company "B" in the future, the situation is treated as though the merger had taken place prior to the date of the determination

(v) Voting trusts. If the purpose of a voting trust or similar agreement is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulation, such voting trust shall not be considered valid for this purpose, regardless of whether the trust is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is a valid trust within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(vi) Control through common management. A concern is considered as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing or has the power to direct or influence, the operation of such other concern.

(a) Interlocking management. Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(b) Common facilities. One concern shares common office space and/or employees and/or other facilities with another concern particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(c) Newly organized concern. Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or other facilities, whether for a fee or otherwise.

(vii) Control through contractual relationships—(a) Definition of a joint venture for size determination purposes. A joint venture, for size determination purposes, is an association of persons or concerns with interest in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single business venture, such as a Government contract, for joint

profit for which purpose they combine their efforts, property, money, skill, or knowledge, but without creating a corporation or partnership in the legal or technical sense of the term.

(*b*) Joint ventures—financial assistance. For the purpose of financial assistance to a joint venture, the parties thereto are considered as controlling or having the power to control each other and are considered as being affiliated. For the purpose of financial assistance to a concern which has requested assistance for its own use, but which is incidentally a party to a joint venture, such concern is not considered as being affiliated with its joint venturer.

(*c*) Joint venture—procurement assistance. Concerns bidding on a particular procurement as joint venturers are considered as controlling or having the power to control each other with regard to performance of the contract, and therefore are considered as being affiliated. However, a concern which is a party to one or more joint ventures, but which is bidding on a procurement as an individual concern, is not considered as being affiliated with its joint ventures since they have no power to control its performance of the contract being bid on.

(*d*) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture)

(*e*) Franchise and license agreements. If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(b) "Annual receipts" means the gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service for Federal income tax purposes: *Provided, however,* If, for the purpose of receiving financial assistance under a Small Business Administration program, it is determined that (1) the applicant has completed at least 3 months of its current fiscal year, (2) its gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) for the completed months of its current fiscal year are at least 25 percent lower than its receipts during the corresponding months of its most recently completed fiscal year, and (3) the reduction in receipts was primarily due to the shortage of energy or materials, or a substantial economic injury which makes it eligible for section 7(b)(5) assistance, its "annual receipts" for size determination purposes shall be computed by reducing its annual receipts for its most recently completed fiscal year by the determined percentile.

(Rev. 13, Amdt. 16, 42 FR 35855, July 12, 1977)

If a concern has been in business less than a year, its annual receipts for the purpose of a size standard based on 1 year's receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has been in business less than 3 years, its average annual receipts for the purpose of a size standard based on 3 years' receipts, shall be computed by determining its average weekly receipts for the period in which it has been in business, and multiplying such figure by 52. Except as set forth in § 121.3–10, if a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts to include the affiliate's receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a for-

mer affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(c) "Appeal" means a written communication addressed to the SBA Size Appeals Board requesting it to review a determination relating to a size matter made by a district director or his delegatee, or by a contracting officer.

(d) "Area of substantial unemployment," for the purpose of small business size determination, means a geographical area within the United States which is classified by the Department of Labor either as an "Area of Substantial Unemployment," or an "Area of Substantial and Persistent Unemployment."

(e) "Base maintenance" means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia, three or more services which may include but are not limited to such maintenance activities as janitorial and custodial services, protective guard services, commissary services, base housing maintenance, fire prevention services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air-conditioning and refrigeration maintenance; *Provided, however,* That whenever the contracting officer determines prior to the issuance of bids that the estimated value of one of the foregoing services constitutes more than 50 percent of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such service is classified.

(f) "Bona fide feed stocks" means crude and any other hydrocarbon material actually charged to refinery processing units, as distinguished from materials used as components in products to be delivered after merely filtering, settling, or blending.

(g) "Crude-oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.

(h) "Certificate of Competency" means a certificate issued by SBA pursuant to the authority contained in section 8(b)(7) of the Act stating that the holder of the certificate is competent as to capacity and credit to perform a specific Government procurement or sales contract.

(i) "Concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see paragraph (a) of this section) any business entity, whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included.

(j) "Contracting officer" means the person executing a particular contract on behalf of the Government and any other employee who is a properly designated contracting officer; the term includes the authorized representative of a contracting officer acting within the limits of his authority.

(k) "Convalescent or nursing home" means those facilities for the accommodation of convalescents or other persons who are not acutely ill or not in need of hospital care but who may require nursing care and related medical services, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(l) "Department store" means a concern employing 25 or more persons engaged in the retail sale of some items in each of the following merchandise lines: (1) Furniture, home furnishings, appliances, radio and television sets; (2) a general line of apparel for the family; and (3) household linens and dry goods; provided, however, that sales within any one of the preceding merchandise lines do not exceed 80 percent of the concern's total sales and the aggregate of such merchandise lines account for at least 50 percent of the concern's total sales.

(m) "Forest products industry" as used in Section 121.3-9(b) 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 or wood related products are the principal raw material.

(n) "Gross leasable area" means the total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines, and upper floors, if any, expressed in square feet measured from the centerline of a joint partition and from outside wall faces.

(o) "Hospital" means a health facility duly licensed as a hospital providing inpatient medical or surgical care of the sick or injured, including obstetrics, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefits of its owner, stockholders or members.

(p) "Industry" means a grouping of establishments primarily engaged in similar lines of activity as listed and described in the Standard Industrial Classification Manual, as amended (SIC Manual), prepared and published by the Bureau of the Budget (now Office of Management and Budget, Executive Office of the President.

(q) "Medical and dental laboratory" means those facilities which provide services to doctors, dentists, hospitals, and similar health facilities, which facilities are privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(r) "Nonmanufacturer" means any concern which, in connection with a specific Government procurement contract other than a construction or service contract, does not manufacture or produce the products required to be furnished by such procurement. Nonmanufacturer includes a concern which can manufacture or produce the products referred to in the specific procurement but does not do so in connection with that procurement. For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision shall be made by the appropriate SBA regional director or his delegatee, and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc.

(s) A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(t) "Number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months: *Provided, however*, If, for the purpose of determining a concern's eligibility for financial assistance under a Small Business Administration program, it is determined that a concern's employment in its most recently completed calendar quarter is at least 25 percent lower than its employment in the corresponding quarter in the preceding calendar year (or its annual receipts for the preceding 3 complete months are at least 25 percent less than its annual receipts for the corresponding months of the preceding calendar year) and that such reduction in employment (or receipts) was primarily due to the shortage of energy or materials, or to a substantial economic injury which makes it eligible for section 7(b)(5) assistance, its "number of employees" for size determination purposes shall be determined by reducing its average employment for the preceding 12 months by the determined percentile. (Rev. 13, Amdt. 16, 42 FR 35855, July 12, 1977) If a concern has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business. If a concern has acquired an affiliate during the applicable accounting period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire applicable accounting period rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(u) "Offshore marine services" means firms furnishing to concerns

engaged in offshore oil and/or natural gas exploration drilling production or marine research, and such services as passenger and freight transportation, rig towing, anchor handling, and related logistical services, to and from the work site or at sea.

(REV. 13, AMDT. 18, 43 FR 10332, MARCH 13, 1978)

(v) "Protest" means a statement in writing from any bidder, offeror, or other interested party on a particular procurement or sale, alleging that another bidder or offeror on such procurement or sale is not a small business concern. See § 121.3-5(a).

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

(w) "Redevelopment area" for the purpose of small business size determinations means a geographical area within the United States which has been designated as a "redevelopment area" in accordance with the Public Works and Economic Development Act of 1965 (Pub. L. 89-136, sec. 401, 75 Stat. 48).

(x) "Shopping center" means a group of commercial establishments planned, developed, owned, and managed as a unit with off-street parking provided on the property.

(y) "Size determination" means an SBA ruling, in writing, that a concern is or is not, or was or was not, a small business within the meaning of this part. An opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of a formal SBA inquiry, is not a "size determination" as that term is used in this part.

(z) "United States" as used in this regulation includes the several States, the territories and possessions of the United States the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

[Rev. 13, 39 FR 44424, Dec. 24, 1974, as amended by Amdt. 11, 41 FR 9298, Mar. 4, 1976]

§ 121.3-3 Organization—size functions.

The Associate Administrator for Policy, Planning and Budgeting shall:

(a) Develop and recommend small business size standards to the Administrator of SBA for promulgation;

(b) Conduct industry hearings pertaining to size matters;

(c) In concert with the Office of General Counsel, issue interpretations of the Size Standards Regulation;

(d) Consider and take appropriate action on written petitions objecting to or requesting amendments or rescission of a published size standard;

(e) Establish procedures for the implementation of all size programs; and

(f) Perform such other related functions as may be appropriate to administer the SBA size program.

(AMDT. 27, 44 FR 26852, MAY 8, 1979)

§ 121.3-4 Size determinations.

(a) Original size determinations shall be made by the regional director, or his delegatee, serving the region in which the principal office of the concern (not including its affiliates) whose size is in question is located, except that for lease guarantee reinsurance purposes such determinations shall be made by the Associate Administrator for Finance and Investment. The regional director or his delegatee, or the Associate Administrator for Finance and Investment promptly shall notify in writing, by certified mail, return receipt requested, the concern in question and other interested persons of his decision. Such determination shall become effective immediately and shall remain in full force and effect unless and until reversed by the Small Business Size Appeals Board pursuant to § 121.3-6. For the purpose of Government procurements or sales, a size determination shall be made only in the event of a protest pursuant to § 121.3-5, a request for recertification, a request for a Certificate of Competency, or if the Associate Administrator for Procurement Assistance or his delegatee or a regional director or his delegatee determines it necessary to question the size status of a concern for the purpose of any Small Business contracting program or Procurement Source Program, or for property sales purposes or for any other purpose relating to Government procurement or sales. For the purpose of SBA financial assistance, a formal size determination under this provision shall be made by the Regional Office only (1) where the regular review of the loan file or other substantial evidence indicates the need therefor and a request is made by the appropriate SBA financial assistance official, or (2) where an initial determination is made by the SBA financial assistance officer that the concern is other than small and a request is made by the loan applicant. Initial nonformal financial assistance size determinations may not be appealed to the Size Appeals Board under § 121.3-6.

(b) Once properly instituted (i.e., by filing of a protest or by an official request for a determination) formal size determinations may be completed, even if the particular application, bid, or offer is subsequently withdrawn, or the Government procurement or sale is cancelled or awarded.

(c) The size determination will be based primarily on facts and allegations supplied by the parties to the SBA. If deemed necessary or appropriate SBA may utilize other information in its files and may make inquiries including requests to the parties or other persons for additional specific

information. The burden of establishing its small business size by submitting full information to SBA shall be upon the concern whose size status is under consideration. Specific signed factual evidence will be weighed more heavily by SBA than general unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure. The SBA formal size determination shall be based upon the record, including reasonable inferences therefrom, and shall state in writing the basis for its findings and conclusions.

(d) If SBA has made a formal size determination that a particular concern is not small, the concern will not be deemed eligible within such applicable size standard for any assistance under the Small Business Act or Small Business Investment Act of 1958, unless it is thereafter recertified by SBA as a small business. Afer such an adverse size determination, the concern shall not self-certify itself as small within the same or a lower employee or annual receipts size standard (whichever is applicable) unless it is recertified. Applications for recertification shall be made to the SBA Regional Office which made the original size determination. Applications for recertification shall be accompanied by a current completed SBA Form 355 and by any other pertinent information necessary to show a significant change in its ownership, management, contractual relations, or in other factors bearing on its status as a small concern. If good cause is shown in extraordinary cases, as determined by the Chairperson of the Size Appeals Board, the original decision on the application for recertification may be made by the Size Appeals Board.

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

§ 121.3–5 Protest of small business status.

(a) How to protest: Any bidder or offeror or other interested party may challenge the small business status of any other bidder or offeror on a particular Government procurement or sale. Such challenge shall be made by delivering a protest to the contracting officer responsible for the particular procurement or sale involved. In order to apply to the procurement or sale in question, such protest must be filed prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening, except that in the case of negotiated procurements, a protest may be filed within 5 days exclusive of Saturdays, Sundays, and legal holidays after receipt from the contracting officer of notification of the identity of the offeror being protested. Such filing must be delivered to the contracting officer by hand, telegram, or mail within the 5-day period allotted, *Provided however*, That a protest shall be considered timely if made by telephone to the contracting officer within the 5-day period allotted and the contracting officer thereafter receives a confirming letter (1) within such 5-day period or (2) postmarked no later than 1 day after the date of such telephone protest. Any contracting officer who receives a protest shall promptly forward such protest to the SBA **regional** office serving the geographical area in which the principal office of the protested concern, not including its affiliates, is located. A contracting officer may at any time after bid opening question the small business status of any bidder or offeror for the purpose of a particular procurement or sale by filing a protest with the SBA district office serving the area in which the principal office of the protested concern, not including its affiliates, is located. A protest by a contracting officer shall be timely for the purpose of the procurement or sale in question whether filed before or after award.

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

A protest received after the time limits set forth herein shall not apply to the procurement or sale in question. A concern determined other than small business as a result of such late protest, however, shall be precluded from self-certification in any other procurement or sale in which the size standard is not higher than the standard in the procurement or sale in question. See § 121.3-4(d) for the procedure under which such a concern can be recertified as a small business. A protest must adequately set forth specific alleged grounds for the protest. A protest merely alleging that the protested concern is not small or is affiliated with unspecified other concerns will not be deemed to adequately specify grounds for the protest. Evidence supporting the protest may be submitted therewith. Protests which do not set forth specific alleged grounds for the protest will be dismissed.

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

(b) Notification of protest: Upon receipt of such protest, the SBA **regional** director or his delegatee shall immediately notify the contracting officer and the protestant of the date such protest has been received and that the size of the concern being protested is being considered by SBA. The regional director or his delegatee shall also advise the protested bidder or offeror of the receipt of the protest and shall forward to the protested bidder or offeror a copy of the protest and a blank SBA Form 355, *Application for Small Business Size Determination*, by certified mail, return receipt requested. Such bidder must, within 3 working days after receipt of the copy of the protest and SBA Form 355, file the completed form as directed by SBA. must attach thereto a statement in answer to the allegations of the letter of protest, together with evidence to support such position. **If the bidder or offeror does not submit the completed SBA Form 355 within the period provided above, or within any additional period of time provided by SBA upon application for good cause shown, SBA may assume that the disclosure of the Form or any missing part thereof would be contrary to the interests of the party failing to make such disclosure.**

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

(c) Notification of determination. After receipt of aprotest and responses thereto, SBA shall determine the small business status of the protested bidder or offeror and, by certified mail, return receipt requested, notify the contracting officer, the protestant, anl the protested bidder or offeror of its decision within 10 working days, if possible.

(d) If SBA has determined that a concern is ineligible as a small business for the purpose of aparticular procurement, it cannot thereafter become eligible for the purpose of such procurement by taking affirmative acts to constitute itself a small business.

§ 121.3-6 Appeals.

(a) Organization. The Size Appeals Board shall review appeals from size determinations made pursuant to §§ 121.3-4 and 121.3-5 and from product classifications made pursuant to §§ 121.3-8 and 121.3-10 and shall make final decisions as to whether such determinations or classifications should be affirmed, reversed or modified. The Size Appeals Board only has jurisdiction to consider appeals from formal determinations as to a concern's small business size status and appeals from product or service classification determinations made by contracting officers for the purpose of Government procurements. It has no jurisdiction to consider an appeal from an informal opinion or advice concerning a company's small business size status, an opinion as to a company's future small business size status based on proposed but unexecuted changes in its organization, management or contractual relations, or an appeal based on an allegation that the small business size standard established by SBA for a particular industry or field of operation is improper for the purpose intended. Size Appeals Board proceedings are essentially fact-finding and nonadversary in nature. The Size Appeals Board shall conduct such proceedings as it determines appropriate to enable it to discharge its duties.

The Size Appeals Board shall consist of five members, to wit: The Deputy Administrator

(Chairperson); the Associate Administrator for Procurement Assistance (Vice Chairperson); the Associate Administrator for Finance and Investment; the Associate Administrator for Minority Small Business and Capital Ownership Development; and the Associate Administrator for Policy, Planning and Budgeting.] In the event the Vice Chairperson acts as Chairperson in the stead of the Deputy Administrator, the Director of the Office of Procurement and Technical Assistance shall become a member of the Board. Each member shall designate one alternate in writing to act in his stead, and in the event of an emergency, the Chairperson may designate a temporary additional alternate for any member. Each member or his alternate shall have one vote except that the Chairperson or the Vice Chairperson acting in his stead shall vote only in the event of a tie.

(AMDT. 32, 44 FR 62280, OCT. 30, 1979)

(b) Method of appeal—(1) Who may appeal. An appeal may be filed by:

(i) Any concern or other interested party which has protested the small business status of another concern pursuant to § 121.3-5 and whose protest has been denied by a regional director or his delegatee;

(ii) Any concern or other interested party which has been adversely affected by a decision of a regional director or his delegatee or by the Associate Administrator for Finance and Investment pursuant to §§ 121.3-4 and 121.3-5;

(iii) Any concern or other interested party which has been adversely affected by a decision of a contracting officer regarding product classification pursuant to § 121.3-8; and

(iv) The Small Business Administration Associate Administrator for the Small Business Administration program involved.

(2) Where to appeal. Written notices of appeal shall be addressed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) Time for appeal. (i) An appeal from a size determination or product classification by a regional director, or his delegatee, may be taken at any time, except that because of the urgency of pending procurements, appeals concerning the small business status of a bidder or offeror in a pending procurement must be within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision by a regional director or his delegatee. Unless written notice of such appeal is received by the Size Appeals Board before the close of business on the 5th working day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned. Appeals from a size determination in a pending Government property sale must be within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision by a regional director or his delegatee. Unless written notice of such appeal is received by the Board before the close of business on the 5th working day, the appellant will be deemed to have waived its rights of appeal insofar as the pending sale is concerned. An appeal received after the time limits set forth herein shall be acted on, but such determination shall not apply to the procurement or sale in question.

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

(ii) An appeal from a contracting officer's designation of the Standard Industrial Classification industry into which the product or service being procured is classified, and/or the Small Business Administration size standard applicable thereto may be taken: (*a*) Not less than 10 days, exclusive of Saturdays, Sundays, and legal holidays, before bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations, or (*b*) not less than 5 days, exclusive of Saturdays, Sundays, and legal holidays, before the bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations, and

(iii) The timeliness of an appeal under paragraph (b)(3) (i) and (ii) of this section shall be determined by the time of receipt of the appeal by the Size Appeals Board: *Provided, however,* That an appeal received after such time limit has expired shall be deemed to be timely and shall be considered if, in the case of mailed appeals, such appeal is sent by registered or certified mail and the postmark thereon indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant, or in the case of telegraphed appeals, the telegram date and time line indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant.

(4) Appeal. No particular form is prescribed for the appeal. However, the appellant shall submit to the Board an original and one legible copy of such appeal. A copy of the appeal shall be simultaneously sent by the appellant to the contracting officer, if applicable, and also a simultaneous copy to the appropriate Regional Office. The appeal should include the following information:

(i) Name and address of concern on which the size determination was made;

(ii) The character of the determination from which appeal is taken and its date;

(iii) If applicable, the IFB or contract number and date, and the name, address and telephone number of the contracting officer;

(iv) A full and specific statement of the reasons why the decision of a regional director, or his delegatee, the contracting officer or the Associate Administrator for Finance and Investment is alleged to be erroneous;

(v) Arguments in support of such allegations; and

(vi) Action sought by the appellant.

Appeals must set forth specifically the alleged ground of material error in the original classification or size determination. The Board generally will not review issues or evidence not previously presented to the SBA office making the original size determination unless such review is determined to be necessary to prevent manifest injury to a party not due to any fault or omission of such party.

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

(c) Notice to interested parties. The Size Appeals Board shall promptly acknowledge receipt of the Notice of Appeal and shall send a copy of such Notice of Appeal to the appropriate regional director or his delegatee and to the contracting officer (if a pending procurement is involved). If the appellant is not the concern whose size status is in question, the Board shall also send a copy of the notice to such concern. The Board shall notify all known interested parties that the appeal has been filed. The Board in its discretion may also provide any of such interested parties with copies of applicant's Notice of Appeal, or parts thereof, when the Board determines that this would be in the interest of fairness or would assist it in the performance of its functions.

(d) Statement of interested parties. After an appeal has been filed, any other interested parties may file with the Board a signed statement, together with one legible copy thereof, as to why the appeal should or should not be denied. Such statements shall be mailed or delivered to the Size Appeals Board, Small Business Administration, Washington, D.C. 20416, within 5 calendar days of the receipt of appropriate notification of appeal or other action in the proceeding. If the appellant is the concern whose size status is in question, the Board will provide copies of such statements submitted in connection with the appeal or a reconsideration thereof to such appellant.

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

(e) Consideration by the Size Appeals Board. (1) The Size Appeals Board shall consider the appeal on the written submission of the parties. The Board may also, in its discretion, conduct an oral inquiry. After consideration of all relevant information, the Board shall promptly render a decision which shall state the reason for such decision.

Time limitations on all submissions will be strictly applied. Late submissions and submissions additional to those provided for in the regulation or requested by SBA may be disregarded by the Board to avoid delay in disposition of the case. If deemed necessary the Board may request additional specific information from the parties or other persons. In the case of refusal or failure to promptly furnish such information, the Board may assume that disclosure would be contrary to the interests of the party failing to make such disclosure.

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

(2) Procedures in oral inquiries. In considering size appeals, and in reconsidering size appeals decisions, the Size Appeals Board may hold an oral inquiry to assist it in arriving at facts necessary in deciding the appeal. The following rules shall govern such oral inquiries:

(i) Oral inquiries may be held by the Size Appeals Board upon the request of any party to a size appeal or by the Board on its own motion. The Board will, in its discretion, determine whether an oral inquiry will be of assistance in its determination of a size appeal. The Board shall inform the party making a request for oral inquiry whether its request is granted. If the Board grants the request for an oral inquiry, it will so notify all other interested parties.

(ii) Oral inquiries held by the Board are investigative in nature and not adversary. Such inquires shall be conducted informally in a manner which will facilitate the Board's factfinding function and insure fairness to all participants.

(iii) Whenever the Board permits the appearance of two or more parties before it in an oral inquiry, cross-examination shall not be permitted between or among such parties; however, any party appearing in such oral inquiry may suggest questions for the Board to direct to other parties which may assist the Board in its determination of relevant facts.

(f) Decision of the Size Appeals Board. The decision of the Size Appeals Board shall be predicated upon the entire record, and it shall state in writing the basis for its findings and conclusions. The Chairman shall promptly notify, in writing, the appellant and the other interested parties of the Board's decision together with the reasons therefor.

(g) Reconsiderations. (1) Following a decision by the Size Appeals Board that a firm and its affiliates are not small business within an applicable size standard, any such firm or affiliate may petition the Size Appeals Board for reconsideration upon presentation of appropriate justification therefor. Such petition must be received by the Size Appeals Board within 10 business days following receipt by the firm of the formal written Findings and Decision of the Board. The Findings and Decision of the Board will be prepared and forwarded

to the parties within a short period of time following the Board's determination. The petition for reconsideration may be in any form, with an original and one copy. The Board will notify interested parties that a petition for reconsideration has been received.

(2) The Chairperson shall consider the petition for reconsideration upon the statement and other evidence presented by the petitioners and any other evidence the Chairperson, in his discretion, deems necessary.

(3) Grounds for reconsideration. Grounds for reconsideration shall be:

(i) A material error of fact in the original decision; or

(ii) Relevant facts not previously considered by the Board and not previously available to the petitioner;

(iii) When a request for reconsideration is made, the petitioning firm must demonstrate that the grounds for reconsideration involve facts which were not previously presented to the Board through no fault or omission of such party.

(4) If the Chairperson denies the request for reconsideration, he shall notify all parties. If the request for reconsideration is granted by the Chairperson, he shall so notify all interested parties, setting forth a reasonable time within which the interested parties may, if appropriate, submit additional information. The Board may, in its discretion, provide interested parties with copies of appropriate information submitted by other parties where it determines that this is necessary in the interest of fairness or to better assist the Board in performing its fact-finding functions.

(5) Following its reconsideration of the matter, the Board will promptly render a decision pursuant to paragraph (f) of this section. The decision of the Board shall constitute the final administrative remedy afforded by this Agency.

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

(h) The following may be summarily dismissed by the Chairperson:

(1) Untimely appeals and untimely petitions for reconsideration;

(2) Appeals not setting forth specifically the alleged grounds of material error in the initial size or classification determination;

(3) Appeals not within the Board's jurisdiction;

(4) Appeals where the allegation of error has no apparent ground of support in either the record before the Board or under the Regulations of this Part 121;

(5) Appeals on product or service classification/size standard determinations where the contract in question has already been awarded;

(6) Petitions for reconsideration which do not specify material errors of fact in the factual findings and conclusions of the Board's decision or do not specify relevant facts not previously presented to SBA through no fault or omission of the petitioning party; and

(7) Appeals primarily based upon issues or evidence that appellant had unreasonably failed to present to the SBA field office and there is no explanation for this failure. Failure to meet time limitations in making submissions to SBA field offices generally would not be a reasonable explanation.

Such summary dismissal by the Chairperson shall be final insofar as the pending procurement or sale is concerned. The Chairperson shall also refer size determination appeals dismissed solely by reason of untimeliness to the Board for a decision as regards eligibility for future procurements, sales, or other small business assistance. He shall not, however, refer to the Board untimely appeals from a product or service classification or size standard determination. The parties and other interested persons shall be promptly notified of the Chairperson's action and the basis thereof.

(Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

§ 121.3–7 Differentials.

(a) Alaska, Hawaii, and certain nonforeign areas outside the continental United States. In computing the annual receipts, average annual receipts, assets, net worth, or average net income of a concern (not including its affiliates) that has 50 percent or more of its annual receipts attributable to business activity within one of the States and nonforeign areas set forth below, such annual receipts, average annual receipts, assets, net worth, or average net income, shall be reduced by the percentage prescribed for such State or area.

	Percent
Alaska	25.0
Hawaii	12.5
Virgin Islands	10.0
Puerto Rico	7.5
Guam	7.5

(b) Substantial or persistent unemployment areas; areas of concentrated unemployment or underemployment; certified eligible concerns and redevelopment areas.

(1) Financial assistance programs of the Small Business Administration and financial assistance under the Small Business Investment Act of 1958, as amended. Notwithstanding any other provision of this part, the applicable size standards for the purpose of all financial assistance programs of the Small Business Administration, except the surety bond guarantee assistance program, and for the purpose of financial assistance under the Small Business Investment Act of 1958, as amended, are increased by 25 percent whenever the concern maintains or operates a plant, facility, or other business establishment within an area of substantial unemployment or underemployment or redevelopment area as defined in § 121.3–2 (d) and (v) or

is designated as a "Certified Eligible" concern by the Department of Labor and agrees to use the assistance within such area, or, if it does not maintain a plant, facility, or other business establishment within such area, agrees to utilize the assistance for the establishment and/or operation of a plant, facility, or other business establishment within such area.

(2) Government procurement assistance, sales of Government property, and Government subcontracting. Section 121.3–7(b) is not applicable to size determinations for the purpose of Government procurement assistance, sales of Government property, or Government subcontracting.

[Rev. 13, 39 FR 44424, Dec. 24, 1974, as amended by Amdt. 12, 41 FR 38162, Sept. 9, 1976]

§ 121.3–8 Definition of small business for Government procurement.

A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts and can further qualify under the criteria set forth in this section. When computing the size status of a bidder or offeror, the number of employees, annual receipts, or other applicable standards of the bidder or offeror and all of its affiliates shall be included. In the submission of a bid or proposal on a Government procurement, a concern which meets the criteria provided in this section and which either has not been determined by SBA to be ineligible, or has been determined to be ineligible but subsequently has on the basis of a significant change in ownership, management or contractual relations, applied for recertification and had its application granted, may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular procurement involved. If a concern has been determined by SBA to be ineligible as a small business under a particular size standard and it has already self-certified as a small business on a pending procurement subject to the same or lower number of employees or annual receipts size standard (whichever is applicable), it shall immediately notify the contracting officer of such adverse size determination and shall not thereafter self-certify on a procurement subject to the same or a lower employee or annual receipts size standard (whichever is applicable) until it has applied for recertification based on a significant change in its ownership, management, or contractual relations, and has been determined eligible as a small business under such size standard by either the regional office which issued the adverse determination or the Small Business Size Appeals Board. If the contracting officer has cause to question the veracity of a self-certification and elects to do so, he shall refer the eligibility issue to SBA by filing a formal protest pursuant to § 121.3–5. If a procurement calls for more than one item and the bidder can bid on any or all items, the bidder must meet the size standard for each item for which it submits a bid. If the procurement calls for more than one item and a bidder is required to bid on all or none of such items, the bidder can qualify as small business for such procurement if it meets the size standard for the item accounting for the greatest percentage of the total contract value. The determination of the appropriate classification of a product or service shall be made by the contracting officer. Both classification and the applicable size standard (number of employees, average annual receipts, etc.) shall be set forth in the solicitation and such determination of the contracting officer shall be final unless appealed in the manner provided in § 121.3–6; **provided, however, that an unclear or incomplete classification action by the contracting officer may be supplied by the SBA field office or the Size Appeals Board or its Chairperson insofar as necessary in connection with a size determination or size appeal.** (Rev. 13, Amdt. 19, 43 FR 13498, March 31, 1978)

If no standard for an industry, field of operation or activity (e.g., animal speciality; fin fish; management-logistics support to be performed outside of the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia) has been set forth in this section, a concern bidding on a Government contract is a small business if, including its affiliates, it is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and has 500 employees or less.

(a) Construction. Any concern bidding on a contract for work which is classified in Division C, Contract Construction, of the Standard Industrial Classification Manual, as amended, prepared by the Office of Management and Budget, Executive Office of the President, is:

(1) Small if its average annual receipts for its preceding 3 fiscal years do not exceed $12 million: Provided, however, That, if 75 percent or more (by value) of the work called for by the contract is classified in one of the industries, subindustries, or class of products set forth in Schedule H of this Part, it is small if it does not exceed the size standard established therein for that industry. (Notwithstanding the above proviso, for a period of 1 year from the effective date of this amendment, any concern which from March 18, 1973, to March 18, 1974, was primarily engaged in performing small business set-aside

contracts, is small for the purpose of any contract covered by the proviso if its average annual receipts for its preceding 3 fiscal years did not exceed $7.5 million. For the purpose of this rule, a concern was primarily engaged in performing small business set-aside contracts if 50 percent or more of its receipts, including receipts of its affiliates, were attributable to such contracts.)

(2) Small, if it is bidding on a contract for dredging and (i) its average annual receipts for its preceding 3 fiscal years do not exceed $9.5 million and (ii) it performs the dredging of at least 40 percent of the yardage advertised in the plans and specifications with dredging equipment owned by the bidder or obtained from another small business dredging concern.

(b) Manufacturing. Any concern bidding on a contract for a product it manufactured is classified:

(1) As small if it is bidding on a contract for food canning and preserving and its number of employees does not exceed 500 persons, exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(2) As small if it is bidding on a contract for a product classified within an industry set forth in Schedule B of this part and its number of employees does not exceed the size standard established for that industry.

(3) As small if it is bidding on a contract for a product classified within an industry not set forth in Schedule B of this part and its number of employees does not exceed 500 persons.

(4) As small if it is bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112: *Provided,* That (i) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture, (ii) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(5) As small if it is bidding on a contract for passenger cars within Census Classification Code 37171: *Provided,* That (i) the value of the passenger cars within Census Classification Code 37171 which it manufactured or otherwise produced in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture or production of such passenger cars, (ii) the value of the passenger cars within Census Classification Code 37171, which it manufactured or otherwise produced during the preceding calendar year was less than 5 percent of the total value of all such manufactured or produced in the United States during the said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than 10 percent of the total value of such product manufactured or otherwise produced or sold in the United States during said period.

(6) Rebuilding on a factory basis or equivalent: As small if it is bidding on a contract for rebuilding machinery or equipment on a factory basis, the purpose of which is to restore such machinery or equipment to as serviceable and as like-new condition as possible and its number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item.

NOTE: The size standard contained herein is not limited to concerns who are manufacturers of the original item but it is applicable to all bidders or offerors. The term "rebuilding on a factory basis" as used in this subsection does not include ordinary repair services such as those involving minor repair and/or preservation operations.

(7) As small if it is bidding on a contract for produce classified in SIC Code 2026, *Fluid Milk,* and its number of employees, exclusive of home-delivery routemen, does not exceed 500 persons.

(c) Nonmanufacturing. Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product not manufactured by said bidder or offerer, is deemed to be a small business concern when:

(1) Its number of employees does not exceed 500 persons, and

(2)(i) In the case of government procurement reserved for small businesses, such nonmanufacturer furnishes in the performance of the contract the products of a small business manufacturer or producer, which products are manufactured or produced in the United States: Provided, however, If the procurement has an anticipated value of less than $10,000 and is subject to, and is actually processed under "small purchase procedures" as defined in the Federal Acquisition Regulation or, pending issuance thereof by the Office of Federal Procurement Policy, in the Defense Acquisition Regulation (DAR), Federal Procurement Regulation (FPR), and the

National Aeronautics and Space Administration Procurement Regulation (NASAPR), as applicable, such nonmanufacturer may furnish any domestically produced or manufactured product.

(Rev. 13, Admt. 22, 43 FR 30533, July 17, 1978)

(Amdt. 35, 45 FR 2840, Jan. 15,1980)

(ii) If the procurement is for a refined petroleum product, other than a product classified in Standard Industrial Classfication Industries No. 2951, Paving Mixtures and Blocks; No. 2952, Asphalt Felts and Coatings; No. 2992, Lubricating Oils and Greases; or No. 2999, Products of Petroleum and Coal, Not Elsewhere Classified; paragraph (g) of this section is for application. For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which with its own forces transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision shall be made by the appropriate SBA regional director or his delegatee, and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc. The Government often purchases items in the form of kits such as, but not limited to, tool kits and survival kits, which are not manufactured items but merely assemblages of separate manufactured items. Accordingly, a concern which purchases some or all of such items and packages them into kit form is considered to be a nonmanufacturer for size determination purposes. Such a concern can qualify as a small business only if it meets all other qualifications of a small nonmanufacturer set forth in this part and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business. For the purpose of a size determination, a sawmill is considered as the manufacturer of treated lumber, even if it contracts out the treatment of the lumber. Therefore, a small business sawmill can deliver in the performance of a set-aside procurement lumber which has been treated by a concern which does not qualify as a small business concern. For the purpose of a size determination, a concern which converts liquid oxygen to gaseous oxygen, with or without additives, is a nonmanufacturer of the gaseous oxygen and, therefore, must furnish gaseous oxygen converted from liquid oxygen manufactured by a small business concern.

(3) A regular dealer, otherwise qualified on an unrestricted procurement, supplying the product of a large business and requiring a Certificate of Competency is deemed to be small if it is independently owned and operated and it alone would enjoy a profit or suffer a loss from the contract.

(Rev. 13, Admt.22, 43 FR 30533, July 17, 1978)

(d) Research, development, and testing. Any concern bidding on a contract for research, development, and/or testing is classified:

(1) As small if it is bidding on a contract for research and/or development which requires delivery of a manufactured product and (i) it qualifies as a small business manufacturer within the meaning of paragraph (b) of this section for the industry into which the product is classified, or (ii) it qualifies as a small business nonmanufacturer within the meaning of paragraph (c) of this section.

(2) As small if it is bidding on a contract for research and/or development which does not require delivery of a manufactured product or on a contract for testing and its number of employees does not exceed 500 persons.

(e) Services. Any concern bidding on a contract for services (including but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual), not elsewhere defined in this section is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $2 million.

(1) Any concern bidding on a contract for engineering services other than marine engineering service is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $7.5 million.

(2) Any concern bidding on a contract for motion picture production or motion picture services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $8 million.

(3) Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4.5 million.

(4) Any concern bidding on a contract for base maintenance is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $7.5 million.

(5) Any concern bidding on a contract for marine cargo handling services is classified as small if its annual receipts do not exceed $7.5 million for its preceding 3 fiscal years.

(6) Any concern bidding on a contract for naval architectural and marine engineering services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $9 million.

(7) Any concern bidding on a contract for food services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5.5 million.

(8) (i) Any concern bidding on a contract for laundry services including linen supply, diaper services, and industrial laundering, is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4 million.

(ii) Any concern bidding on a contract for cleaning and dyeing including rug cleaning services, is classified as small if its average annual receipts for the preceding 3 fiscal years do not exceed $1.5 million.

(9) Any concern bidding on a contract for computer programming services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4 million.

(10) Any concern bidding on a contract for flight training services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $7 million.

(11) Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $7 million.

(12) Any concern bidding on a contract for tire recapping services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4 million. This section applies only to procurements requiring the services of tire retreading and repair shops (Standard Industrial Classification Industry No. 7534, Tire Retreading and Repair Shops) and not to procurements for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, are considered for size standards purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

(13) Any concern bidding on a contract for data processing services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4 million.

(14) Any concern bidding on a contract for computer maintenance services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $7 million.

(15) Any concern bidding on a contract for services requiring the use of one or more helicopters or fixed-wing aircraft is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3.5 million.

(16) Any concern bidding on a contract for refuse collection services, with or without disposal, is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3.5 million. (Notwithstanding the above provision, for a period of 1 year from the effective date of this amendment, any concern which, for a period of 1 year prior to the effective date of this amendment was primarily engaged in performing small business set-aside contracts for refuse collection subject to a $7 million annual receipts size standard, is classified as small if its average annual receipts for its preceding 3 fiscal years did not exceed $7 million. For the purpose of this rule, a concern was primarily engaged in performing small business set-aside contracts for refuse collection subject to a $7 million size standard if 50 percent or more of its receipts, including receipts of its affiliates, were attributable to such contracts.)

(Rev. 13, Amdt. 17, 42 FR 36449, July 15, 1977)

(17) Any concern bidding on a contract for protective services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4.5 million.

(REV. 13, AMDT. 23, 43 FR 31883, JULY 24, 1978, EFFECTIVE SEPT. 22, 1978)

(f) Transportation. Any concern bidding on a contract for passenger or freight transportation, not elsewhere defined in this section, is classified:

(1) As small if its number of employees does not exceed 500 persons.

(2) As small if it is bidding on a contract for air transportation and its number of employees does not exceed 1,500 persons.

(3) As small if it is bidding on a contract for either trucking (local and/or long distance) and/or warehousing and/or packing and crating and/or freight-forwarding, and its annual receipts do not exceed $7 million.

(4) As small if it is primarily engaged in the provision of offshore marine services as defined in § 121.3-2(u) and its annual receipts do not exceed $10 million.

(REV. 13, AMDT. 18, 43 FR 10332, MARCH 13, 1978)

(g) Refined petroleum products. Any concern bidding on a contract for a refined petroleum product other than a product classified in Standard Industrial Classification Industries No. 2951, Paving Mixtures and Blocks; No. 2952, Asphalt Felts and Coatings; No. 2992, Lubricating Oils and Grease; or No. 2999, Products of Petroleum and Coal, Not Else-

where Classified; is classified as small if (1) (i) its number of employees does not exceed 1,500 persons; (ii) it does not have more than 50,000 barrels per day crude oil or bona fide feedstock capacity from owned or leased facilities or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined-product-for-refined product basis), or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased; and (iii) the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feedstocks; *Provided, however,* That a

petroleum refining concern which meets the requirements in paragraph (g)(1)(i) and (ii) of this section may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which requires exchanges in a stated ratio on a refined-petroleum-product - for - a - refined - petroleum - product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in paragraph (g)(1)(iii) of this section; and, provided further, That the exchange of products for products to be delivered to the Government will be completed within 90 days after the expiration of the delivery period under the Government contract; and that any product furnished pursuant to a bona fide exchange agreement must be for delivery in the same Petroleum Administration for Defense (PAD) District pursuant to Schedule C of Part 121, as that in which the small refinery is located; or (2) its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under paragraph (g)(1) of this section. The proviso that the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feedstocks contemplates that, in accomplishing such refining, the bidder will utilize its own employees and facilities which it owns or obtains under a bona fide lease as distinguished from any other arrangement having the same effect as a lease. The proviso permitting a concern which meets the requirements in paragraph (g)(1)(i) and (ii) of this section to furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement which meets prescribed requirements, contemplates that the product exchanged by the bidder for the product to be furnished, shall have been refined by the bidder utilizing only its own employees and its own facilities or facilities obtained through a bona fide lease.

[Rev. 13, 39 FR 44424, Dec. 24, 1974, as amended by Amdt. 5, 40 FR 32824, Aug. 5, 1975; 40 FR 36310, Aug. 20, 1975; Amdt. 6, 40 FR 50519, Oct. 30, 1975; Amdt. 8, 41 FR 4013, Jan. 28, 1976]

§ 121.3-9 Definition of small business for sales or lease of Government property.

In the submission of a bid or proposal for the purchase of Government-owned property, a concern which meets the criteria provided in this section and which either has not been determined by SBA to be ineligible, or has been determined to be ineligible but subsequently has, on the basis of a significant change in ownership, management or contractual relations, applied for recertification and had its application granted, may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved. If the contracting officer has cause to question the veracity of a self-certification and elects to do so, he shall refer the eligibility issue to SBA by filing a formal protest pursuant to § 121.3-5. If a concern has been determined by SBA to be ineligible as a small business under a particular size standard and it has already self-certified as a small business on a pending sale subject to the same or lower number of employees or annual receipts size standard (whichever is applicable), it shall immediately notify the contracting officer of such adverse size determination and shall not thereafter self-certify on a sale subject to the same or a lower employee or annual receipts size standard (whichever is applicable) until it has applied for recertification based on a significant change in its ownership, management, or contractual relations, and has been determined eligible as a small business under such size standard by either the regional office which issued the adverse determination or the Small Business Size Appeals Board.

(a) Sales of Government-owned property other than timber. A small business concern for the purpose of the sale of Government-owned property other than timber is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of

operation, and can further qualify under the following criteria:

(1) Manufacturers. Any concern which is primarily engaged in manufacturing is small if its number of employees does not exceed 500 persons: *Provided, however,* That a concern primarily engaged in SIC Industry 2911, Petroleum Refining, is small if its number of employees does not exceed 1,500 persons and it does not have more than 45,000 barrels per day crude oil or bona fide stock capacity from owned and/or leased facilities, or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined-product-for-refined-product basis) or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased.

(2) Other than manufacturers. Any concern which is primarily not a manufacturer (except as specified in paragraph (a)(3) of this section) is small if its average annual receipts for its preceding 3 fiscal years do not exceed $1 million.

(3) Stockpile purchasers. Any concern primarily engaged in the purchase of materials which are not domestic products is small if its annual receipts for its preceding 3 fiscal years do not exceed $42 million.

(b) Sales of Government-owned timber. (1) In connection with sale of Government-owned timber, a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 500 persons.

(2) In the case of Government sales of timber reserved for or involving preferential treatment of small businesses, when the Government timber being purchased is to be resold, a concern is a small business when:

(i) It is a small business within the meaning of paragraph (b)(1) of this section, and

(ii) It agrees that it will not sell to a concern which is not a small business within the meaning of this paragraph more than 30 percent of such timber or, in the case of timber from certain geographical areas set forth in Schedule E of this part, more than the percentage established therein for such area. The term "sell" includes but is not limited to 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 (or a controlling interest in) a concern after it has been awarded one or more set-aside sales of timber. Under the latter circumstances, if, after being awarded a set-aside sale of timber a small business concern merges with or becomes subject to the control of a large business, so much of such timber (or sawlogs therefrom) shall be sold to one or more small businesses as is necessary for compliance with the 30 percent (50 percent in Alaska) restriction.

(3) In the case of Government sales reserved for or involving preferential treatment of small businesses, when the Government timber purchased is not to be resold in the form of sawlogs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in paragraph (b)(1) of this section, and

(ii) It agrees that in manufacturing lumber or timbers from such sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under paragraph (b)(1) of this section as a small business. This provision assumes that the successful bidder will remain a small business until the products have been manufactured. Accordingly, if, after acquiring the set-aside sale the bidder is purchased by, becomes controlled by, or merged with a large business, so much of such timber (or sawlogs therefrom) as is necessary shall be sold to one or more small businesses for compliance with the 30 percent (50 percent in Alaska) restriction. Any concern which self-certifies as a small business concern for the purpose of award under a small business set-aside sale of Government timber is expected to maintain evidence that it did so in good faith. Accordingly, such a concern will have to maintain for a period of 3 years the names, address, and size status of each concern to whom the timber or sawlogs were sold or disposed, and the log species, grades, and volumes involved. Such concern, and any subsequent small business concern that acquires the sawlogs, also shall require its small business purchasers to maintain

similar records for a period of 3 years. Further, if the timber purchased is not to be resold in the form of sawlogs, but is to be manufactured into lumber or timbers by a concern other than the bidder, the bidder must maintain records to show the name, address, and size status of the concern manufacturing the sawlogs into lumber or timbers.

(c) Special salvage timber sales, (1) in connection with sale of Government-owned special salvage timber, designated by the USFS as SSTS, a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 25 persons during any pay period for the last 12 months.

(2) In the case of Government-owned special salvage timber reserved for or involving preferential treatment of small businesses, restricting the disposal of timber and, when the special salvage timber being purhased is to be resold, a concern is a small business when: (i) It is a small business within the meaning of paragraph (c)(1) of this section, and (ii) it agrees that it will not sell to a concern which is not a small business within the meaning of paragraph (b)(1) of this section more than 30 percent of such timber or, in the case of timber from certain geographical areas set forth in schedule E of this part, more than the percentage established therein for such area. The term "sell" includes but is not limited to 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 (or a controlling interest in) a concern after it has been awarded one or more set-aside sales of timber. Under the latter circumstances, if, after being awarded a set-aside sale of timber a small business concern merges with or becomes subject to the control of a large business, so much of such timber (or sawlogs therefrom) shall be sold to one or more small businesses as is necessary for compliance with the 30 percent (50 percent in Alaska) restriction.

(3) In the case of Government-owned special salvage timber reserved for or involving preferential treatment of small businesses, restricting the disposal of timber, and when the special salvage timber purchased is not to be resold in the form of sawlogs to be manufactured into lumber and timbers, a concern is a small business when (i) it meets the criteria contained in paragraph (c)(1) of this section, and (ii) it agrees that in manufacturing lumber or timbers from such sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under paragraph (b)(1) of this section as a small business. This provision assumes that the successful bidder will remain a small business until the products have been manufactured. Accordingly, if, after acquiring the set-aside sale the bidder is purchased by, becomes controlled by, or merged with a large business, so much of such timber (or sawlogs therefrom) as is necessary shall be sold to one or more small businesses for compliance with the 30 percent (50 percent in Alaska) restriction. Any concern which self-certifies as a small business concern for the purpose of award under a small business set-aside sale of Government timber is expected to maintain evidence that it did so in good faith. Accordingly, such a concern will have to maintain for a period of 3 years the name, address, and size status of each concern to whom the timber or sawlogs were sold or disposed, and the log species, grades, and volumes involved. Such concern, and any subsequent small business concern that acquires the sawlogs, also shall require its small business purchasers to maintain similar records for a period of 3 years. Further, if the timber purchased is not to be resold in the form of sawlogs but is to be manufactured into lumber or timbers by a concern other than the bidder, the bidder must maintain records to show the name, address, and size status of the concern manufacturing the sawlogs into lumber or timbers.

(4) In the case of Government-owned special salvage timber reserved for or involving preferential treatment of small businesses, the special salvage timber may be disposed of without restriction when there are less than two qualified mills in the market area.

[Rev. 13, 39 FR 44424, Dec. 24, 1974, as amended by Amdt. 4, 40 FR 32825, Aug. 5, 1975; Amdt. 5, 40 FR 50519, Oct. 30, 1975]

(AMDT. 25, 44 FR 34, JAN. 2, 1979)

(d) Any firm bidding to lease Government land for purposes of coal mining is classified as small if:

(1) It is independently owned and operated;

(2) It is not dominant in its field of operation;

(3) Together with its affiliates, its number of employees does not exceed 250 persons;

(4) It maintains management and control of the actual mining operations at the tract; and

(5) Any transfer of the lease from the holder of the original set-aside must be to another small business within the meaning of this paragraph.

(REV. 13, AMDT 31 44 FR 59504, OCT. 16 1979)

§ 121.3–10 Definition of small business for SBA loans.

A small business concern for the purpose of receiving an SBA loan is a concern, including its affiliates, which, on the date of receipt of the loan application accepted by the SBA, is independently owned and operated, is not dominant in its field of operation, and can further qualify under the criteria set forth below, *provided however*, That a concern which applies for an SBA loan to refinance an existing SBA loan but which, since the date of the original financing, has by natural growth, as distinguished from merger, etc., grown to a size which exceeds the applicable size standard, is considered as small for the purpose of refinancing if SBA administratively determines that refinancing is necessary to protect the Government's financial interest. A concern which is a small business under § 121.3–8 and which has applied for or received a Certificate of Competency is a small business eligible for an SBA loan to finance the contract covered by the Certificate of Competency. If no standard for an industry, field of operation, or activity has been set forth in this section, a concern seeking a size determination shall submit SBA Form 355 to the Assistant Administrator for Advocacy, Planning and Research, Washington, D.C. 20416, who shall determine what size standard shall be used on an ad hoc basis until a size standard is established for such industry or field of activity. **If a concern, not having any affiliates, is engaged in more than one industry with different size standards, the applicable size standard shall be that of its primary engaged industry. If an applicant concern has affiliates primarily engaged in other industries, the applicable size standard shall be that of the primary engaged industry of the entire affiliated group of concerns including the applicant. In determining which of the industries is the primary industry, consideration is given to these criteria, among others: distribution among such industries of receipts, employment, and costs of doing business.**

(REV.13 AMDT.13, 42 FR 20457, APRIL 20, 1977)
(AMDT. 30, 44 FR 57914, OCT. 9, 1979)

(a) Construction. Any construction concern is small if its average annual receipts do not exceed $9.5 million for its preceding 3 fiscal years: *Provided, however*, That, if it is primarily engaged in an industry set forth in Schedule I of this part, it is small if its average annual receipts do not exceed the size standard established therein for that industry.

(b) Manufacturing. Any manufacturing concern is classified:

(1) As small if it is primarily engaged in an industry set forth in Schedule A of this part and its number of empolyees does not exceed the size standard established therein for that industry.

(2) As small if it is primarily engaged in an industry not set forth in Schedule A of this part and its number of employees does not exceed 250 persons.

(3) As small if it is primarily engaged in the food canning and preserving industry and its number of employees does not exceed 500 persons exclusive of agricultural labor as defined in subsection (k) of the Federal Employment Tax Act, 68A Stat. 454, 25 U.S.C. (I.R.C. 1954) 3306.

(4) As small if it is primarily engaged in manufacturing products in SIC Code 23413 (Women's and Children's Nightwear, made from woven or purchased knit fabrics) has suffered substantial economic injury which makes it eligible for assistance under section 7(b)(5) of the Small Business Act, files an application for such assistance by May 24, 1979, and has an average number of employees not to exceed 500.

(AMDT. 26, 44 FR 1725, JAN. 8, 1979)

qualifies as a small business under Section 121.3–11.

§ 121.3–14 Definition of small business for the purpose of Government leases of uranium prospecting or mining rights.

In the submission of a bid or proposal for a Government lease of uranium prospecting or mining rights, a concern whose number of employees does not exceed 100 persons may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular lease involved.

[Rev. 13, 40 FR 4119, Jan. 28, 1975]

§ 121.3–15 Definition of small business for the purpose of surety bond guarantee assistance.

A small business concern for the purpose of surety bond guarantee assistance is a concern that qualifies as a small business under § 121.3–10, with the following exceptions:

(a) *Construction.* Any constuction concern (general and special trade) is small if its annual receipts for its preceding fiscal year or its average annual receipts for its preceding three fiscal years do not exceed $3.5 million. Provided, that those special trade contractors now receiving surety bond guarantee assistance and having annual receipts in excess of $3.5 million, will be permitted to continue receiving surety bond guarantee assistance until such time as their annual receipts (or as averaged over the contractor's last 3 fiscal years) exceed $5 million.

(b) *Service.* Any concern performing a contract for services (including but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual) is classified as small if its annual receipts for its preceding fiscal year or its average annual receipts for its preceding 3 fiscal years do not exceed $3.5 million.

(AMDT. 24, 43 FR 36052, AUG. 15, 1978)

§ 121.3–16 Definition of small business for the purpose of pollution control guarantee assistance under Public Law 94–305.

A small business concern, for the purpose of pollution control guarantee assistance under Public Law 94–305, is a concern that qualifies as small under § 121.3–11.

(Rev. 13, Admt 14, 42 FR 29300, June 8, 1977)

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING

(The following size standards are to be used when determining the size status of applicants for SBA business loans, displaced business loans, economic opportunity loans, surety bond guarantee assistance, and as alternate standards for Sections 501 and 502 loans and SBIC assistance.)

SCHEDULE A—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS	
2011	Meat packing plants	500
2013	Sausages and other prepared meat products	500
2023	Condensed and evaporated milk	500
2024	Ice cream and frozen desserts	500
2026	Fluid milk	500
2032	Canned specialties	1,000
2033	Canned fruits, vegetables, preserves, jams, and jellies	500
2034	Dried and dehydrated fruits, vegetables, and soup mixes	500
2037	Frozen fruits, fruit juices, and vegetables	500
2038	Frozen specialties	500
2041	Flour and other grain mill products	500
2043	Cereal breakfast foods	1,000
2045	Blended and prepared flour	500
2046	Wet corn milling	750
2047	Dog, cat and other pet foods	500
2052	Cookies and crackers	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2066	Chocolate and cocoa products	500
2067	Chewing gum	500
2075	Soybean oil mills	500
2076	Vegetable oil mills, except corn, cottonseed and soybean	1,000
2079	Shortening, table oils, margarine and other edible fats and oils, n.e.c	750
2082	Malt beverages	500
2085	Distilled, rectified and blended liquors	750
2087	Flavoring extracts and flavoring sirups, n.e.c	500
20991	Desserts (ready to mix)	500
20994	Baking powder and yeast	500
	MAJOR GROUP 21—TOBACCO MANUFACTURES	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Tobacco (chewing and smoking) and snuff	500
2141	Tobacco stemming and redrying	500
	MAJOR GROUP 22—TEXTILE MILL PRODUCTS	
2211	Broad-woven fabric mills, cotton	1,000
2221	Broad-woven fabric mills, manmade fiber and silk	500
2261	Finishers of broad-woven fabrics of cotton	500
2262	Finishers of broad-woven fabrics of manmade fiber and silk	500
2271	Woven carpets and rugs	750
2272	Tufted carpets and rugs	500
2279	Carpets and rugs, n.e.c	500
2281	Yarn spinning mills: cotton, manmade fibers and silk	500
2284	Thread mills	500
2296	Tire cord and fabric	1,000
	MAJOR GROUP 23—APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS	
2321	Men's, youths', and boys' shirts (except work shirts) and nightwear	500
	MAJOR GROUP 25—FURNITURE AND FIXTURES	
2522	Metal office furniture	500
	MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS	
2611	Pulp mills	750
2621	Paper mills, except building paper mills	750

See footnotes at end of Schedule A.

SCHEDULE A—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
2631	Paperboard mills	750
2641	Paper coating and glazing	500
2643	Bags, except textile bags	500
2646	Pressed and molded pulp goods	750
2647	Sanitary paper products	500
2648	Stationery, tablets and related products	500
2649	Converted paper and paperboard products, n.e.c.	500
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS	
2812	Alkalies and chlorine	1,000
2813	Industrial gases	1,000
2816	Inorganic pigments	1,000
2819	Industrial inorganic chemicals, n.e.c.	1,000
2821	Plastic materials, synthetic resins and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1,000
2823	Cellulosic manmade fibers	1,000
2824	Synthetic organic fibers, except cellulosic	1,000
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2842	Specialty cleaning, polishing, and sanitation preparations	500
2844	Perfumes, cosmetics, and other toilet preparations	500
2861	Gum and wood chemicals	500
2865	Cyclic (coal tar) crudes, and cyclic intermediates, dyes, and organic pigments (lakes and toners)	750
23651	Cyclic (coal tar) crudes	500
2869	Industrial organic chemicals, n.e.c.	1,000
2873	Nitrogenous fertilizers	1,000
2874	Phosphatic fertilizers	500
2875	Fertilizers, mixing only	500
2879	Pesticides and agricultural chemicals, n.e.c.	500
2892	Explosives	750
2895	Carbon black	500
28992	Fatty acids	500
	MAJOR GROUP 29—PETROLEUM REFINING AND RELATED PRODUCTS	
2911	Petroleum refining [2]	1,500
2952	Asphalt felts and coatings	750
2992	Lubricating oils and greases	500
	MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	
3011	Tires and innertubes	1,000
3021	Rubber and plastics footwear	1,000
3031	Reclaimed rubber	750
3041	Rubber and plastics hose and belting	500
3069	Fabricated rubber products, n.e.c.	500
	MAJOR GROUP 31—LEATHER AND LEATHER PRODUCTS	
3143	Men's footwear, except athletic	500
3144	Women's footwear, except athletic	500
3149	Footwear, except rubber, n.e.c.	500

SCHEDULE A—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	MAJOR GROUP 32—STONE, GLASS AND CONCRETE PRODUCTS	
3211	Flat glass	1,000
3221	Glass containers	750
3229	Pressed and blown glass and glasswear, n.e.c.	750
3241	Cement, hydraulic	750
3253	Ceramic wall and floor title	500
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	500
3262	Vitreous china table and kitchen articles	500
3263	Fine earthenware (whitewear) table and kitchen articles	500
3264	Porcelain electrical supplies	500
3274	Lime	500
3275	Gypsum products	1,000
3292	Asbestos products	750
3293	Gaskets, packing and sealing devices	500
3296	Mineral wool	750
3297	Nonclay refractories	750
	MAJOR GROUP 33—PRIMARY METAL INDUSTRIES	
3312	Blast furnaces (including coke ovens), steel works and rolling mills	1,000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1,000
3316	Cold rolled steel sheet, strip and bars	1,000
3317	Steel pipe and tubes	1,000
3321	Gray iron foundries	500
3322	Malleable iron foundries	500
3324	Steel investment foundries	500
3325	Steel foundries, n.e.c.	500
3331	Primary smelting and refining of copper	1,000
3332	Primary smelting and refining of lead	1,000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1,000
3339	Primary smelting and refining of nonferrous metals, n.e.c.	750
3351	Rolling, drawing and extruding of copper	750
3353	Aluminum sheet, plate and foil	750
3354	Aluminum extruded products	750
3355	Aluminum rolling and drawing, n.e.c.	750
3356	Rolling, drawing and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1,000
3398	Metal heat treating	750
3399	Primary metal products, n.e.c.	750
	MAJOR GROUP 34—FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	
3411	Metal cans	1,000
3412	Metal shipping barrels, drums, kegs and pails	500
3421	Cutlery	
3431	Enameled iron and metal sanitary ware	750
3432	Plumbing fixture fittings and trim (brass goods)	500

See footnotes at end of Scedhule A.

SCHEDULE A—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
3433	Heating equipment, except electric and warm air furnaces	500
3452	Bolts, nuts, screws, rivets and washers	500
3462	Metal forging and stamping	500
3482	Small arms ammunition	1,000
3483	Ammunition, except for small arms, n.e.c	1,000
3484	Small arms	1,000
3493	Steel springs, except wire	500
3494	Valves and pipe fittings, except plumbers' brass goods	500
3497	Metal foil and leaf	500
3499	Fabricated metal products, n.e.c	500
	MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL	
3511	Steam, gas, and hydraulic turbines and turbine generator set units	1,000
3519	Internal combustion engines, n.e.c	1,000
3523	Farm machinery and equipment	500
3524	Garden tractors and lawn and garden equipment	500
3531	Construction machinery and equipment	750
3532	Mining machinery and equipment, except oil field machinery and equipment	500
3533	Oil field machinery and equipment	500
3534	Elevators and moving stairways	500
3536	Hoists, industrial cranes, and monorail systems	500
3537	Industrial trucks, tractors, trailers and stackers	750
3541	Machine tools, metal cutting types	500
3542	Machine tools, metal forming types	500
35452	Precision measuring tools	500
3546	Power-driven hand tools	500
3547	Rolling mill machinery and equipment	500
3549	Metalworking machinery, n.e.c	500
3555	Printing trades machinery and equipment	500
3561	Pumps and pumping equipment	500
3562	Ball and roller bearings	750
3563	Air and gas compressors	500
3566	Speed changers, industrial-high-speed drives and gears	500
3568	Mechanical power transmission equipment, n.e.c	500
3572	Typewriters	1,000
3573	Electronic computing equipment	1,000
3574	Calculating and accounting machines, except electronic computing equipment	1,000
3579	Office machines, n.e.c	500
3585	Air-conditioning and warm-air heating equipment and commercial and industrial refrigeration equipment	750
3586	Measuring and dispensing pumps	500
	MAJOR GROUP 36—ELECTRICAL AND ELECTRONIC MACHINERY, EQUIPMENT AND SUPPLIES	
3612	Power, distribution and specialty transformers	750

SCHEDULE A—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1,000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3629	Electrical industrial apparatus, n.e.c	500
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1,000
3633	Household laundry equipment	1,000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3639	Household appliances, n.e.c	500
3641	Electric lamps	1,000
3643	Current-carrying wiring devices	500
3644	Noncurrent-carrying wiring devices	500
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records and prerecorded magnetic tape	750
3661	Telephone and telegraph apparatus	1,000
3662	Radio and television transmitting, signaling and detection equipment and apparatus	750
3671	Radio and television receiving-type electron tubes, except cathode ray	1,000
3672	Cathode ray television picture tubes	750
3673	Transmitting, industrial and special purpose electron tubes	750
3674	Semiconductors and related devices	500
3675	Electronic capacitors	500
3676	Resistors for electronic applications	500
3677	Electronic coils, transformers and other inductors	500
3678	Connectors, for electronic applications	500
3679	Electronic components, n.e.c	500
3691	Storage batteries	500
3692	Primary batteries, dry and wet	1,000
3693	Radiographic X-ray, fluoroscopic X-ray, therapeutic X-ray, and other X-ray apparatus and tubes; electromedical and electrotherapeutic apparatus	500
3694	Electrical equipment for internal combustion engines	750
3699	Electrical machinery, equipment and supplies, n.e.c	500
	MAJOR GROUP 37—TRANSPORTATION EQUIPMENT	
3711	Motor vehicle and passenger car bodies	1,000
3714	Motor vehicle parts and accessories	500
3715	Truck trailers	500
3721	Aircraft [2]	1,500
3724	Aircraft engines and engine parts	1,000
3728	Aircraft parts and auxiliary equipment, n.e.c	1,000
3731	Shipbuilding and repairing	1,000
3743	Railroad equipment	750

See footnotes at end of Schedule A.

SCHEDULE A—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
3751	Motorcycles, bicycles and parts	500
3764	Guided missile and space vehicle propulsion units and propulsion unit parts	1,000
2769	Guided missile and space vehicle parts and auxiliary equipment, n.e.c	1,000
3795	Tanks and tank components	1,000
	MAJOR GROUP 38—MEASURING, ANALYZING AND CONTROLLING INSTRUMENTS, PHOTOGRAPHIC, MEDICAL AND OPTICAL GOODS; CLOCKS AND WATCHES	
3811	Engineering, laboratory, scientific and research instruments and associated equipment	500
3822	Automatic controls for regulating residential and commercial environments and appliances	500
3823	Industrial instruments for measurement, display and control of process variables and related products	500
3824	Totalizing fluid meters and counting devices	500
3825	Instruments for measuring and testing of electricity and electrical signals	500
3829	Measuring and controlling devices, n.e.c	500
3861	Photographic equipment and supplies	500
3873	Watches, clocks, clockwork operated devices, and parts	500
	MAJOR GROUP 39—MISCELLANEOUS MANUFACTURING INDUSTRIES	
3914	Silverware, plated ware and stainless steel ware	500
3951	Pens, mechanical pencils and parts	500
3996	Linoleum, asphalted-felt-base, and other hard surface floor coverings, n.e.c	750
39903	Matches	500

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

[2] Together with its affiliates, does not employ more than 1,500 persons and does not have more than 50,000 barrels per day crude oil or bona fide feedstock capacity from owned and/or leased facilities or from facilities made available to such concerns under an arrangement such as, but not limited to, an exchange agreement (except one on a refined-product-for-a-refined-product basis) or a throughput or other form of processing agreement with the same effect as though such facilities had been leased.

[3] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations, "Maintenance means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. 'Preventive maintenance' means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

[Rev. 13, 39 FR 44424, Dec. 24, 1974, as amended by Amdt. 6, 40 FR 50519, Oct. 30, 1975]

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS	
2032	Canned specialties	1,000
2043	Cereal breakfast foods	1,000
2046	Wet corn milling	750
2052	Cookies and crackers	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2076	Vegetable oil mills, except corn, cottonseed and soybean	1,000
2079	Shortening, table oils, margarine and other edible fats and oils, n.e.c	750
2085	Distilled, rectified, and blended liquors	750
	MAJOR GROUP 21—TOBACCO MANUFACTURES	
2111	Cigarettes	1,000
	MAJOR GROUP 22—TEXTILE MILL PRODUCTS	
2211	Broad-woven fabric mills, cotton	1,000
2261	Finishers of broad-woven fabrics of cotton	1,000
2271	Woven carpets and rugs	750
2295	Fabrics, not rubberized	1,000
2296	Tire cord and fabric	1,000
	MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS	
2611	Pulpmills	750
2621	Papermills, except building papermills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS	
2812	Alkalies and chlorine	1,000
2813	Industrial gases	1,000
2816	Inorganic pigments	1,000
2819	Industrial inorganic chemicals, n.e.c	1,000
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1,000
2823	Cellulosic manmade fibers	1,000
2824	Synthetic organic fibers, except cellulosic	1,000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2865	Cyclic (coal tar) crudes, and cyclic intermediates, dyes, and organic pigment (lakes and toners)	750
2869	Industrial organic chemicals, n.e.c	1,000
2873	Nitrogenous fertilizers	1,000
2892	Explosives	750
	MAJOR GROUP 29—PETROLEUM REFINING AND RELATED INDUSTRIES[3]	
2952	Asphalt felts and coatings	750

See footnotes at end of Schedule B.

SCHEDULE B—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	MAJOR GROUP 50—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	
3011	Tires and innertubes	1,000
30111	Passenger car and motorcycle pneumatic tires (casings)[4]	
30112	Truck and bus (and off-the-road) pneumatic tires [4]	
3021	Rubber and plastics footwear	1,000
3031	Reclaimed rubber	750
	MAJOR GROUP 32—STONE, CLAY, GLASS, AND CONCRETE PRODUCTS	
3211	Flat glass	1,000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, n.e.c	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3275	Gypsom products	1,000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750
	MAJOR GROUP 33—PRIMARY METAL INDUSTRIES	
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1,000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1,000
3316	Cold-rolled sheet, strip and bars	1,000
3317	Steel pipe and tubes	1,000
3331	Primary smelting and refining of copper	1,000
3332	Primary smelting and refining of lead	1,000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1,000
3339	Primary smelting and refining of nonferrous metals, n.e.c	750
3351	Rolling, drawing, and extruding of copper	750
3353	Aluminum sheet, plate, and foil	750
3354	Aluminum extruded products	750
3355	Aluminum rolling and drawing, n.e.c	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1,000
3398	Metal heat treating	750
3399	Primary metal products, n.e.c	750
	MAJOR GROUP 34—FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	
3411	Metal cans	1,000
3431	Enameled iron and metal sanitary ware	750
3482	Small arms ammunition	1,000
3483	Ammunition, except for small arms, n.e.c	1,500
3484	Small arms	1,000
	MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL	
3511	Steam, gas, and hydraulic turbines and turbine-generator set units	1,000

SCHEDULE B—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
3519	Internal combustion engines, n.e.c	1,000
3531	Construction machinery and equipment	750
3537	Industrial trucks, tractors, trailers and stackers	750
3562	Ball and roller bearings	750
3572	Typewriters	1,000
3573	Electronic computing equipment	1,000
3574	Calculating and accounting machines, except electronic computing equipment	1,000
3585	Air conditioning and warm air heating equipment and commercial and industrial refrigeration equipment	750
	MAJOR GROUP 36—ELECTRICAL AND ELECTRONIC MACHINERY, EQUIPMENT, AND SUPPLIES	
3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1,000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1,000
3633	Household laundry equipment	1,000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3641	Electric lamps	1,000
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records and prerecorded magnetic tapes	750
3661	Telephone and telegraph apparatus	1,000
3662	Radio and television transmitting, signaling, and detection equipment, and apparatus [5]	750
3671	Radio and television receiving type electron tubes, except cathode ray	1,000
3672	Cathode ray television picture tubes	750
3673	Transmitting, industrial, and special purpose electron tubes	750
3692	Primary batteries, dry and wet	1,000
3694	Electrical equipment for internal combustion engines	750
	MAJOR GROUP 37—TRANSPORTATION EQUIPMENT	
3711	Motor vehicles and passenger car bodies	1,000
37111	Passenger cars (knocked down or assembled) [4]	
3721	Aircraft [6]	1,500
3724	Aircraft engines and engine parts [6]	1,000
3728	Aircraft parts and auxilliary equipment, n.e.c	1,000
3731	Shipbuilding and repairing	1,000
3743	Railroad equipment	1,000
3761	Guided missiles and space vehicles	1,000

See footnore at end of Schedule B,

SCEDULE B—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
3764	Guided missiles and space vehicle propulsion units and propulsion unit parts	1,000
3769	Guided missile and space vehicle parts and auxiliary equipment, n.e.c	1,000
3795	Tanks and tank components	1,000
	MAJOR GROUP 39—MISCELLANEOUS MANUFACTURING INDUSTRIES	
3996	Linoleum, asphalted-felt-base, and other hard surface floor coverings, n.e.c	750

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

[2] [Reserved]

[3] The size standard for SIC 2911 is set forth in § 121.3-8(g).

[4] The size standards for SIC 30111, 30112, and 37111 are set forth in §§ 121.3-8(b)(4) and 121.3-8(b)(5), respectively, of this part.

[5] Guided missile engines and engine parts are classified in SIC 3764 and 3724. Missile control systems are classified in SIC 3662.

[6] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations: "Maintenance" means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. "Preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.

[Rev. 13, 39 FR 44424, Dec. 24, 1974, as amended by Amdt. 8, 41 FR 4013, Jan. 28, 1976]

SCHEDULE C—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN WHOLESALING

(The following size standards are to be used when determining the size status of wholesaling concerns for the purpose of SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for Sections 501 and 502 loans and SBIC assistance. Where a code is followed by a letter, the size standard applies only to the class of product designated.)

Industry or sub-industry code	Industry, Subindustry, or Class of Products	Annual receipts size standard (maximum, in millions)
	MAJOR GROUP 50—WHOLESALE TRADE—DURABLE GOODS	
5012	Automobile and motor vehicles	$22.0
5014	Tires and tubes	22.0
5023(a)	Home furnishings, floor coverings	14.5
5039	Construction materials, N.E.C	14.5

SCHEDULE C—Continued

Industry or sub-industry code	Industry, subindustry, or class of products	Annual receipts size standard (maximum, in millions)
5041	Sporting and recreational goods and supplies	14.5
5042	Toys and hobby goods and supplies	14.5
5051(a)	Metals service centers	14.5
5051(b)	Metals sales offices	22.0
5052(a)	Coal	14.5
5063	Electrical apparatus and equipment, wiring supplies, and construction materials	22.0
5064	Electrical appliances, television, and radio sets	14.5
5081	Commercial machines and equipment	22.0
5082	Construction and mining machinery and equipment	14.5
5083	Farm and garden machinery and equipment	22.0
5084	Industrial machinery and equipment	14.5
5085	Industrial supplies	14.5
	MAJOR GROUP 51—WHOLESALE TRADE—NONDURABLE GOODS	
5111	Printing and writing paper	14.5
5113	Industrial and personal service paper	22.0
5122	Drugs, drug proprietaries and druggists' sundries	14.5
5133	Piece goods (woven fabrics)	14.5
5134	Notions and other dry goods	14.5
5139	Footwear	14.5
5141	Groceries, general line	22.0
5142	Frozen foods	22.0
5143	Dairy products	14.5
5147	Meats and meat products	14.5
5149	Groceries and related products, N.E.C	14.5
5152	Cotton	22.0
5153	Grain	14.5
5154	Livestock	14.5
5161	Chemicals and allied products	22.0
5171	Petroleum bulk stations and terminals	22.0
5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals	22.0
5182	Wines and distilled alcoholic beverages	22.0
5194	Tobacco and tobacco products	14.5
5198	Paints, varnishes, and supplies	22.0

[Rev. 13, Amdt. 5, 40 FR 32826, Aug. 5, 1975]

SCHEDULE D—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN RETAILING

(The following size standards are to be used when determining the size status of retailing concerns for the purpose of SBA loans, displaced business loans, economic opportunity loans, and as alternate standards for section 501 and 502 loans and SBIC assistance. Where a code is followed by a letter, the size standard applies only to the class of product designated.)

	MAJOR GROUP 52—BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS	
5271	Mobile home dealers	$3.5

SCHEDULE D—Continued

Industry or subindustry code	Industry, subindustry, or class of products	Annual receipts size standard (maximum, in millions)
	MAJOR GROUP 53—GENERAL MERCHANDISE STORES	
5311	Department stores	7.5
5331	Variety stores...g	3.0
	MAJOR GROUP 54—FOOD STORES	
5411	Grocery stores	7.5
5423(a)	Meat markets (a part of meat and fish (seafood) markets)	7.5
	MAJOR GROUP 55—AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS	
5511	Motor vehicle dealers (new and used)	6.5
5521	Motor vehicle dealers (used only)	6.5
5599(a)	Aircraft (a part of automotive dealers, n.e.c.)	5.0
	MAJOR GROUP 56—APPAREL AND ACCESSORY STORES	
5611	Men's and boys' clothing and furnishings stores	2.5
5621	Women's ready-to-wear stores	2.5
5651	Family clothing stores	2.5
5661	Shoe stores	2.5
	MAJOR GROUP 57—FURNITURE, HOME FURNISHINGS, AND EQUIPMENT STORES	
5722	Household appliance stores	2.5
5732	Radio and television stores	2.5
	MAJOR GROUP 59—MISCELLANEOUS RETAIL	
5961	Mail Order Houses	7.5
5983	Fuel Oil Dealers	100 employees.

[Rev. 13, Amdt. 5, 40 FR 32826, Aug. 5, 1975]

(Amdt. 28, 44 FR 47039, Aug. 10, 1979)

(Amdt. 34, 44 FR 72582, Dec 14, 1979)

SCHEDULE E—GOVERNMENT-OWNED TIMBER RESALE STANDARDS FOR SPECIFIC GEOGRAPHICAL AREAS

Area from which timber is cut	Percentage of timber purchased that may be sold to other than small business
Alaska	50 percent.

SCHEDULE F—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MINING AND MINING SERVICES

(The following size standards are to be used when determining the size status of mining and mining services concerns for the purpose of SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for Sections 501 and 502 loans and small business investment company assistance.)

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
1111	Anthracite	250
1112	Anthracite mining services	250
1211	Bituminous coal and lignite	500
1213	Bituminous coal and lignite mining services	250

SCHEDULE G—PETROLEUM ADMINISTRATION FOR DEFENSE (PAD) DISTRICTS AS UTILIZED BY THE DEFENSE FUEL SUPPLY CENTER IN THE PROCUREMENT OF REFINED PETROLEUM PRODUCTS

PAD Districts and States included in PAD District

1. Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida.
2. North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Kentucky, and Tennessee.
3. New Mexico, Texas, Arkansas, Louisiana, Mississippi, and Alabama.
4. Montana, Idaho, Wyoming, Utah, and Colorado.
5. Alaska, Hawaii, Washington, Oregon, Nevada, California, and Arizona.

Industry or subindustry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in millions)
1711	Plumbing, heating (except electric), and air-conditioning	$2
1721	Painting, paper hanging, and decorating	1
1731	Electrical work	2
1741	Masonry, stone setting, and other stonework	1

SCHEDULE H—ANNUAL RECEIPTS SIZE STANDARDS FOR PURPOSE OF BIDDING ON PROCUREMENTS FOR CONSTRUCTION—SPECIAL TRADE CONTRACTORS

Census classification code	Industry, subindustry, or class of products	Average (3 yr) annual receipts size standard (maximum, in millions)
	Major group 17—construction—special trade contractors:	
1711	Plumbing, heating (except electric), and air-conditioning	$5
1721	Painting, paperhanging, and decorating	5
1731	Electrical work	5
1741	Masonry, stone setting, and other stonework	5
1742	Plastering, drywall, acoustical and insulation work	5
1743	Terazzo, tile, marble, and mosaic work	5
1751	Carpentering and flooring	5
1752	Floor laying and other floorwork, not elsewhere classified	5
1761	Roofing and sheet metal work	5
1771	Concrete work	5
1781	Water well drilling	5
1791	Structural steel erection	5
1793	Glass and glazing work	5
1794	Excavating and foundation work	5
1795	Wrecking and demolition work	5
1796	Installation or erection of building equipment, not elsewhere classified	5
1799	Special trade contractors, not elsewhere classified	5

[Rev. 13, Amdt. 7, 40 FR 51033, Nov. 3, 1975]

SCHEDULE I.—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN CONSTRUCTION (SPECIAL TRADE CONTRACTORS

Industry or sub-industry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in millions)
1711	Plumbing, heating (except electric), and air-conditioning	$5
1721	Painting, paper hanging, and decorating	5
1731	Electrical work	5
1741	Masonry, stone setting, and other stonework	5
1742	Plastering, drywall, acoustical, and insulating work	5
1743	Terrazzo, tile, marble, and mosaic work	5
1751	Carpentering and flooring	5
1752	Floor laying and other floorwork, not elsewhere classified	5
1761	Roofing and sheet metal work	5
1771	Concrete work	5
1781	Water well drilling	5
1791	Structural steel erection	5
1793	Glass and glazing work	5
1794	Excavating and foundation work	5
1795	Wrecking and demolition work	5
1796	Installation or erection of building equipment, not elsewhere classified	5
1799	Specialtr ade contractors, not elsewhere classified	5

[Rev. 13, Amdt. 10, 41 FR 5809, Feb. 10, 1976]

GPO 872 336

PART 121 – SMALL BUSINESS SIZE STANDARDS
SBA RULES AND REGULATIONS

FILING INSTRUCTIONS: Remove and destroy pages 14 and 15. Insert the attached pages 14, 15 and 15a into Part 121. File this page following Part 121, Amendment 35.

This amendment makes the work "reserved" synonymous with "set aside" within the context of Part 121.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Revision 13, Amdt. 36]

Small Business Size Standards; Small Procurement Purchases Under $10,000 (Public Law 95-507)

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On January 15, 1980, SBA published an amendment in the **Federal Register** (45 FR 2840) which allows small nonmanufacturers to supply any domestically produced product on procurements with an anticipated value of less than $10,000 and subject to small purchase procedures. There has been confusion as to the meaning of the word "reserved" within the context of paragraph 121.3-8(c) of the Small Business Rules and Regulations. this amendment is intended to clarify the regulation by making the word "reserved" synonymous with "set aside" within the context of 13 CFR Part 121.

DATE: July 11, 1980.

FOR FURTHER INFORMATION CONTACT: John D. Whitmore, Jr. (202) 653-6373.

SUPPLEMENTAL INFORMATION: Accordingly, pursuant to authority contained in § 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 634, Schedule D of Part 121, Chapter I of Title 13, Code of Federal Regulations is amended by revising paragraphs (c) (2) and (3) and adding a new (4) to read as follows:

(See pages 14 and 15 for amendment.)

Dated: July 3, 1980.

A. Vernon Weaver,
Administrator.

[FR Doc. 80-20521 Filed 7-10-80; 8:45 am]
BILLING CODE 8025-01-M

Published: July 11, 1980
Effective: July 11, 1980
Cite: 45 FR 46795

contracts, is small for the purpose of any contract covered by the proviso if its average annual receipts for its preceding 3 fiscal years did not exceed $7.5 million. For the purpose of this rule, a concern was primarily engaged in performing small business set-aside contracts if 50 percent or more of its receipts, including receipts of its affiliates, were attributable to such contracts.)

(2) Small, if it is bidding on a contract for dredging and (i) its average annual receipts for its preceding 3 fiscal years do not exceed $9.5 million and (ii) it performs the dredging of at least 40 percent of the yardage advertised in the plans and specifications with dredging equipment owned by the bidder or obtained from another small business dredging concern.

(b) Manufacturing. Any concern bidding on a contract for a product it manufactured is classified:

(1) As small if it is bidding on a contract for food canning and preserving and its number of employees does not exceed 500 persons, exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(2) As small if it is bidding on a contract for a product classified within an industry set forth in Schedule B of this part and its number of employees does not exceed the size standard established for that industry.

(3) As small if it is bidding on a contract for a product classified within an industry not set forth in Schedule B of this part and its number of employees does not exceed 500 persons.

(4) As small if it is bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112: *Provided,* That (i) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture, (ii) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(5) As small if it is bidding on a contract for passenger cars within Census Classification Code 37171: *Provided,* That (i) the value of the passenger cars within Census Classification Code 37171 which it manufactured or otherwise produced in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture or production of such passenger cars, (ii) the value of the passenger cars within Census Classification Code 37171, which it manufactured or otherwise produced during the preceding calendar year was less than 5 percent of the total value of all such manufactured or produced in the United States during the said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than 10 percent of the total value of such product manufactured or otherwise produced or sold in the United States during said period.

(6) Rebuilding on a factory basis or equivalent: As small if it is bidding on a contract for rebuilding machinery or equipment on a factory basis, the purpose of which is to restore such machinery or equipment to as serviceable and as like-new condition as possible and its number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item.

NOTE: The size standard contained herein is not limited to concerns who are manufacturers of the original item but it is applicable to all bidders or offerors. The term "rebuilding on a factory basis" as used in this subsection does not include ordinary repair services such as those involving minor repair and/or preservation operations.

(7) As small if it is bidding on a contract for produce classified in SIC Code 2026, *Fluid Milk,* and its number of employees, exclusive of home-delivery routemen, does not exceed 500 persons.

(c) Nonmanufacturing. Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product not manufactured by said bidder or offerer, is deemed to be a small business concern when:

(1) Its number of employees does not exceed 500 persons, and

(2)(i) In the case of Government procurement reserved (i.e., set aside) for or involving the preferential treatment of small businesses, such nonmanufacturer furnishes in the performance of the contract the products of a small business manufacturer or producer, which products are manufactured or produced in the United States: Provided, however, if the goods to be furnished are woolen, worsted, knitwear, duck, and webbing, dealers and converters shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear), and, if finishing is required, by a small finisher. If the procurement is for thread, dealers and converters shall

furnish such products which have been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specifications but excluding mercerizing, spinning, throwing, or twisting operations.")

(ii) If the procurement is for a refined petroleum product, other than a product classified in Standard Industrial Classification Industries No. 2951, *Paving Mixtures and Blocks;* No. 2952, *Asphalt Felts and Coatings;* No 2992, *Lubricating Oils and Greases;* or No. 2999, *Products of Petroleum and Coal, Not Elsewhere Classified;* paragraph (g) of this section is for application. For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision shall be made by the appropriate SBA regional administrator or his delegatee, and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc. The Government often purchases items in the form of kits such as, but not limited to, tool kits and survival kits which are not manufactured items but merely assemblages of separate manufactured items. Accordingly, a concern which purchases some or all of such items and packages them into kit form is considered to be a nonmanufacturer for size determination purposes. Such a concern can qualify as a small business only if it meets all other qualifications of a small nonmanufacturer set forth in this part and, if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business, For the purpose of a size determination, a sawmill is considered as the manufacturer of treated lumber, even if it contracts out the treatment of the lumber. therefore, a small business sawmill can deliver, in the performance of a set-aside procurement, lumber which has been treated by a concern which does not qualify as a small business concern. for the purpose of a size determination, a concern which converts liquid oxygen to gaseous oxygen, with or without additives, is a nonmanufacturer of the gaseous oxygen and, therefore, must furnish gaseous oxygen converted from liquid oxygen manufactured by a small business concern.

(3) A regular dealer, otherwise qualified on an unrestricted procurement, supplying the product of a large business, and requiring a Certificate of Competency, is deemed to be small if it is independently owned and operated and it alone would enjoy a profit or suffer a loss from the contract.

(4) Notwithstanding the provisions of (2), above, in the case of Government procurement reserved (i.e., set aside) for small business, if the procurement has an anticipated value of less than $10,000 and is subject to, and is actually processed under "small purchase procedures" as defined in the Federal Acquisition Regulation or, pending issuance thereof by the Office of Federal Procurement Policy, in the Defense Acquisition Regulation (DAR), Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR), as applicable, such nonmanufacturer may furnish any domestically produced or manufactured product.

(Rev. 13, Admt. 22, 43 FR 30533, July 17, 1978)

(Amdt. 35 45 FR 2840, Jan 15, 1980)

(Amdt. 36, 45 FR 46795, July 11, 1980)

(ii) If the procurement is for a refined petroleum product, other than a product classified in Standard Industrial Classification Industries No. 2951, Paving Mixtures and Blocks; No. 2952, Asphalt Felts and Coatings; No. 2992, Lubricating Oils and Greases; or No. 2999, Products of Petroleum and Coal, Not Elsewhere Classified; paragraph (g) of this section is for application. For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which with its own forces transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision shall be made by the appropriate SBA regional director or his delegatee, and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc. The Government often purchases items in the form of kits such as, but not limited to, tool kits and survival kits, which are not manufactured items but merely assemblages of separate manufactured items. Accordingly, a concern which purchases some or all of such items and packages them into kit form is considered to be a nonmanufacturer for size determination purposes. Such a concern can qualify as a small business only if it meets all other qualifications of a small nonmanufacturer set forth in this part and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business. For the purpose of a size determination, a sawmill is considered as the manufacturer of treated lumber, even if it contracts out the treatment of the lumber. Therefore, a small business sawmill can deliver in the performance of a set-aside procurement lumber which has been treated by a concern which does not qualify as a small business concern. For the purpose of a size determination, a concern which converts liquid oxygen to gaseous oxygen, with or without additives, is a nonmanufacturer of the gaseous oxygen and, therefore, must furnish gaseous oxygen converted from liquid oxygen manufactured by a small business concern.

(3) A regular dealer, otherwise qualified on an unrestricted procurement, supplying the product of a large business and requiring a Certificate of Competency is deemed to be small if it is independently owned and operated and it alone would enjoy a profit or suffer a loss from the contract.

(Rev. 13, Amdt.22, 43 FR 30533, July 17, 1978)

(d) Research, development, and testing. Any concern bidding on a contract for research, development, and/or testing is classified:

(1) As small if it is bidding on a contract for research and/or development which requires delivery of a manufactured product and (i) it qualifies as a small business manufacturer within the meaning of paragraph (b) of this section for the industry into which the product is classified, or (ii) it qualifies as a small business nonmanufacturer within the meaning of paragraph (c) of this section.

(2) As small if it is bidding on a contract for research and/or development which does not require delivery of a manufactured product or on a contract for testing and its number of employees does not exceed 500 persons.

(e) Services. Any concern bidding on a contract for services (including but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual), not elsewhere defined in this section is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $2 million.

(1) Any concern bidding on a contract for engineering services other than marine engineering service is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $7.5 million.

(2) Any concern bidding on a contract for motion picture production or motion picture services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $8 million.

(3) Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4.5 million.

(4) Any concern bidding on a contract for base maintenance is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $7.5 million.

PART 121 – SMALL BUSINESS SIZE STANDARDS
SBA RULES AND REGULATIONS

FILING INSTRUCTIONS: Insert the attached pages 5, 6, 27 and 28 into Part 121. Remove and destroy old pages. File this page following Part 121, Amendment 36.

This amendment changes the size standard for motor vehicle dealers from $6.5 million in annual sales to either $6.5 million in annual sales or 950 new retail motor vehicles sold, whether measured over its most recently completed fiscal year or its most recently completed 12-month period.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121
[Revision 13, Amdt. 37]

Establishing a New Small Business Size Standard for Motor Vehicle Dealers (New and Used) for Purposes of SBA Financial Assistance

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule changes the size standard for motor vehicle dealers from $6.5 million in annual sales to either $6.5 million in annual sales or 950 new retail motor vehicles sold, whether measured over its most recently completed fiscal year or its most recently completed 12-month period. This action is necessary to provide assistance to a segment of the automotive industry severely impacted by the current economic conditions. The effect of this change will allow new car dealers the option of using either a "gross receipts" definition or an "annual units sold" measure to determine its small business status.

EFFECTIVE DATE: July 15, 1980.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Jr. (202) 653–6373.

SUPPLEMENTAL INFORMATION: On July 8, 1980, President Carter announced that the Federal Government would recommend and make available substantial assistance to the failing automobile manufacturing industry and the hard-pressed auto dealers. For the auto dealers, he has recommended that guaranteed loans be provided to assist as many firms as possible in this industry. The President stated that, "In order to adapt the program to dealers' needs, SBA will adjust its eligibility standards and procedures." In order to implement this directive, the size standards for the auto dealers are to be modified by establishing a criteria based on number of new retail motor vehicles sold.

Another modification that is to be promulgated involves an additional provision to the "annual receipts" definition. This modification also will be applicable to the dollar volume size standards not only for auto dealers, but for all industries.

For these reasons SBA adopts as a final rule that a motor vehicle dealer will be considered small if it sells 950 new retail motor vehicles or fewer in a year (whether fiscal or most recent 12-month period) or its annual receipts do not exceed $6.5 million in annual sales and permits its annual receipts measure for both the auto industry and for all industries with an annual sales size standard to be either defined on a fiscal year basis or on the most recently completed 12-month period if sufficiently verifiable bookkeeping records are available.

SBA also wishes to note that 13 CFR Part 121.3–7(b)(1) allows a 25 percent differential in the size standard for firms located in high unemployment areas.

This rule is being published as final so that SBA can immediately provide relief to automobile dealers whose livelihood has been severely threatened by current economic conditions.

Additionally, since this rule provides for a broadening of SBA size standards, it will not adversely affect any small business. Accordingly, pursuant to authority contained in section 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 634, Schedule D and Part 121.3–2(b) are amended as follows:

(See pages 5 and 28 for amendments.)

Dated: July 9, 1980.
William H. Mauk, Jr.,
Acting Administrator.

[FR Doc. 80–21191 Filed 7–14–80; 8:45 am]
BILLING CODE 6025–01–M

Published: July 15, 1980
Effective: July 15, 1980
Cite: 45 FR 47415

profit for which purpose they combine their efforts, property, money, skill, or knowledge, but without creating a corporation or partnership in the legal or technical sense of the term.

(*b*) Joint ventures—financial assistance. For the purpose of financial assistance to a joint venture, the parties thereto are considered as controlling or having the power to control each other and are considered as being affiliated. For the purpose of financial assistance to a concern which has requested assistance for its own use, but which is incidentally a party to a joint venture, such concern is not considered as being affiliated with its joint venturer.

(*c*) Joint venture—procurement assistance. Concerns bidding on a particular procurement as joint venturers are considered as controlling or having the power to control each other with regard to performance of the contract, and therefore are considered as being affiliated. However, a concern which is a party to one or more joint ventures, but which is bidding on a procurement as an individual concern, is not considered as being affiliated with its joint ventures since they have no power to control its performance of the contract being bid on.

(*d*) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture)

(*e*) Franchise and license agreements. If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(b) "Annual receipts" means the gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) or for purposes under § 121.3–10 its most recently completed 12-month period, as entered on its regular books of account, and in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes:

(Amdt. 37, 45 FR 47415, July 15, 1980)

Provided, however, If, for the purpose of receiving financial assistance under a Small Business Administration program, it is determined that (1) the applicant has completed at least 3 months of its current fiscal year, (2) its gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) for the completed months of its current fiscal year are at least 25 percent lower than its receipts during the corresponding months of its most recently completed fiscal year, and (3) the reduction in receipts was primarily due to the shortage of energy or materials, or a substantial economic injury which makes it eligible for section 7(b)(5) assistance, its "annual receipts" for size determination purposes shall be computed by reducing its annual receipts for its most recently completed fiscal year by the determined percentile.

(Rev. 13, Amdt. 16, 42 FR 35855, July 12, 1977)

If a concern has been in business less than a year, its annual receipts for the purpose of a size standard based on 1 year's receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has been in business less than 3 years, its average annual receipts for the purpose of a size standard based on 3 years' receipts, shall be computed by determining its average weekly receipts for the period in which it has been in business, and multiplying such figure by 52. Except as set forth in § 121.3–10, if a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts to include the affiliate's receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a for-

mer affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(c) "Appeal" means a written communication addressed to the SBA Size Appeals Board requesting it to review a determination relating to a size matter made by a district director or his delegatee, or by a contracting officer.

(d) "Area of substantial unemployment," for the purpose of small business size determination, means a geographical area within the United States which is classified by the Department of Labor either as an "Area of Substantial Unemployment," or an "Area of Substantial and Persistent Unemployment."

(e) "Base maintenance" means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia, three or more services which may include but are not limited to such maintenance activities as janitorial and custodial services, protective guard services, commissary services, base housing maintenance, fire prevention services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air-conditioning and refrigeration maintenance; *Provided, however,* That whenever the contracting officer determines prior to the issuance of bids that the estimated value of one of the foregoing services constitutes more than 50 percent of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such service is classified.

(f) "Bona fide feed stocks" means crude and any other hydrocarbon material actually charged to refinery processing units, as distinguished from materials used as components in products to be delivered after merely filtering, settling, or blending.

(g) "Crude-oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.

(h) "Certificate of Competency" means a certificate issued by SBA pursuant to the authority contained in section 8(b)(7) of the Act stating that the holder of the certificate is competent as to capacity and credit to perform a specific Government procurement or sales contract.

(i) "Concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see paragraph (a) of this section) any business entity, whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included.

(j) "Contracting officer" means the person executing a particular contract on behalf of the Government and any other employee who is a properly designated contracting officer; the term includes the authorized representative of a contracting officer acting within the limits of his authority.

(k) "Convalescent or nursing home" means those facilities for the accommodation of convalescents or other persons who are not acutely ill or not in need of hospital care but who may require nursing care and related medical services, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(l) "Department store" means a concern employing 25 or more persons engaged in the retail sale of some items in each of the following merchandise lines: (1) Furniture, home furnishings, appliances, radio and television sets; (2) a general line of apparel for the family; and (3) household linens and dry goods; provided, however, that sales within any one of the preceding merchandise lines do not exceed 80 percent of the concern's total sales and the aggregate of such merchandise lines account for at least 50 percent of the concern's total sales.

(m) "Forest products industry" as used in Section 121.3-9(b) 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 or wood related products are the principal raw material.

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SCHEDULE B—Continued

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
3764	Guided missiles and space vehicle propulsion units and propulsion unit parts	1,000
3769	Guided missile and space vehicle parts and auxilliary equipment, n.e.c.	1,000
3795	Tanks and tank components	1,000
	MAJOR GROUP 39—MISCELLANEOUS MANUFACTURING INDUSTRIES	
3996	Linoleum, asphalted-felt-base, and other hard surface floor coverings, n.e.c.	750

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

[2] [Reserved]

[3] The size standard for SIC 2911 is set forth in § 121.3-8(g).

[4] The size standards for SIC 30111, 30112, and 37111 are set forth in §§ 121.3-8(b)(4) and 121.3-8(b)(5), respectively, of this part.

[5] Guided missile engines and engine parts are classified in SIC 3764 and 3724. Missile control systems are classified in SIC 3662.

[6] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations: "Maintenance" means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. "Preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.

[Rev. 13, 39 FR 44424, Dec. 24, 1974, as amended by Amdt. 8, 41 FR 4013, Jan. 28, 1976]

SCHEDULE C—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN WHOLESALING

(The following size standards are to be used when determining the size status of wholesaling concerns for the purpose of SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for Sections 501 and 502 loans and SBIC assistance. Where a code is followed by a letter, the size standard applies only to the class of product designated.)

Industry or sub-industry code	Industry, Subindustry, or Class of Products	Annual receipts size standard (maximum, in millions)
	MAJOR GROUP 50—WHOLESALE TRADE—DURABLE GOODS	
5012	Automobile and motor vehicles	$22.0
5014	Tires and tubes	22.0
5023(a)	Home furnishings, floor coverings	14.5
5039	Construction materials, N.E.C.	14.5

SCHEDULE C—Continued

Industry or sub-industry code	Industry, subindustry, or class of products	Annual receipts size standard (maximum, in millions)
5041	Sporting and recreational goods and supplies	14.5
5042	Toys and hobby goods and supplies	14.5
5051(a)	Metals service centers	14.5
5051(b)	Metals sales offices	22.0
5052(a)	Coal	14.5
5063	Electrical apparatus and equipment, wiring supplies, and construction materials	22.0
5064	Electrical appliances, television, and radio sets	14.5
5081	Commercial machines and equipment	22.0
5082	Construction and mining machinery and equipment	14.5
5083	Farm and garden machinery and equipment	22.0
5084	Industrial machinery and equipment	14.5
5085	Industrial supplies	14.5
	MAJOR GROUP 51—WHOLESALE TRADE—NONDURABLE GOODS	
5111	Printing and writing paper	14.5
5113	Industrial and personal service paper	22.0
5122	Drugs, drug proprietaries and druggists' sundries	14.5
5133	Piece goods (woven fabrics)	14.5
5134	Notions and other dry goods	14.5
5139	Footwear	14.5
5141	Groceries, general line	22.0
5142	Frozen foods	22.0
5143	Dairy products	14.5
5147	Meats and meat products	14.5
5149	Groceries and related products, N.E.C.	14.5
5152	Cotton	22.0
5153	Grain	14.5
5154	Livestock	14.5
5161	Chemicals and allied products	22.0
5171	Petroleum bulk stations and terminals	22.0
5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals	22.0
5182	Wines and distilled alcoholic beverages	22.0
5194	Tobacco and tobacco products	14.5
5198	Paints, varnishes, and supplies	22.0

[Rev. 13, Amdt. 5, 40 FR 32826, Aug. 5, 1975]

SCHEDULE D—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN RETAILING

(The following size standards are to be used when determining the size status of retailing concerns for the purpose of SBA loans, displaced business loans, economic opportunity loans, and as alternate standards for section 501 and 502 loans and SBIC assistance. Where a code is followed by a letter, the size standard applies only to the class of product designated.)

	MAJOR GROUP 52—BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS	
5271	Mobile home dealers	$3.5

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SCHEDULE D—Continued

Industry or sub-industry code	Industry, subindustry, or class of products	Annual receipts size standard (maximum, in millions)
	MAJOR GROUP 53—GENERAL MERCHANDISE STORES	
5311	Department stores	7.5
5331	Variety stores	3.0
	MAJOR GROUP 54—FOOD STORES	
5411	Grocery stores	7.5
5423(a)	Meat markets (a part of meat and fish (seafood) markets)	7.5
	MAJOR GROUP 55—AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS	
5511	Motor vehicle dealers (new and used)[1]	6.5
5521	Motor vehicle dealers (used only)	6.5
5599(a)	Aircraft (a part of automotive dealers, n.e.c.)	5.0

[1] Together with its affiliates, its annual receipts do not exceed $6.5 million or its annual unit sales (whether measured over its most recently completed fiscal year or its most recently completed 12-month period if the concern possesses verifiable records) do not exceed 950 new retail motor vehicles.

(Amdt. 37, 45 FR 47415, July 15, 1980)

	MAJOR GROUP 56—APPAREL AND ACCESSORY STORES	
5611	Men's and boys' clothing and furnishings stores	2.5
5621	Women's ready-to-wear stores	2.5
5651	Family clothing stores	2.5
5661	Shoe stores	2.5
	MAJOR GROUP 57—FURNITURE, HOME FURNISHINGS, AND EQUIPMENT STORES	
5722	Household appliance stores	2.5
5732	Radio and television stores	2.5
	MAJOR GROUP 59—MISCELLANEOUS RETAIL	
5961	Mail Order Houses	7.5
5983	Fuel Oil Dealers	100 employees

[Rev. 13, Amdt. 5, 40 FR 32826, Aug. 5, 1975]

(Amdt. 28, 44 FR 47039, Aug. 10, 1979)

(Amdt. 34, 44 FR 72582, Dec 14, 1979)

SCHEDULE E—GOVERNMENT-OWNED TIMBER RESALE STANDARDS FOR SPECIFIC GEOGRAPHICAL AREAS

Area from which timber is cut	Percentage of timber purchased that may be sold to other than small business
Alaska	50 percent.

SCHEDULE F—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MINING AND MINING SERVICES

(The following size standards are to be used when determining the size status of mining and mining services concerns for the purpose of SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for Sections 501 and 502 loans and small business investment company assistance.)

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
1111	Anthracite	250
1112	Anthracite mining services	250
1211	Bituminous coal and lignite	500
1213	Bituminous coal and lignite mining services	250

SCHEDULE G—PETROLEUM ADMINISTRATION FOR DEFENSE (PAD) DISTRICTS AS UTILIZED BY THE DEFENSE FUEL SUPPLY CENTER IN THE PROCUREMENT OF REFINED PETROLEUM PRODUCTS

PAD Districts and States included in PAD District

1. Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida.
2. North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Kentucky, and Tennessee.
3. New Mexico, Texas, Arkansas, Louisiana, Mississippi, and Alabama.
4. Montana, Idaho, Wyoming, Utah, and Colorado.
5. Alaska, Hawaii, Washington, Oregon, Nevada, California, and Arizona.

Industry or sub-industry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in million s)
1711	Plumbing, heating (except electric), and air-conditioning	$2
1721	Painting, paper hanging, and decorating	1
1731	Electrical work	2
1741	Masonry, stone setting, and other stonework	1

SCHEDULE H—ANNUAL RECEIPTS SIZE STANDARDS FOR PURPOSE OF BIDDING ON PROCUREMENTS FOR CONSTRUCTION—SPECIAL TRADE CONTRACTORS

Census classification code	Industry, subindustry, or class of products	Average (3 yr) annual receipts size standard (maximum, in millions)
	Major group 17—construction—special trade contractors:	
1711	Plumbing, heating (except electric), and air-conditioning	$5
1721	Painting, paperhanging, and decorating	5
1731	Electrical work	5
1741	Masonry, stone setting, and other stonework	5
1742	Plastering, drywall, acoustical and insulation work	5
1743	Terazzo, tile, marble, and mosaic work	5
1751	Carpentering and flooring	5
1752	Floor laying and other floorwork, not elsewhere classified	5
1761	Roofing and sheet metal work	5
1771	Concrete work	5
1781	Water well drilling	5
1791	Structural steel erection	5
1793	Glass and glazing work	5
1794	Excavating and foundation work	5
1795	Wrecking and demolition work	5
1796	Installation or erection of building equipment, not elsewhere classified	5
1799	Special trade contractors, not elsewhere classified	5

[Rev. 13, Amdt. 7, 40 FR 51033, Nov. 3, 1975]