

SBA


SOP 90 01 5

**Size Determination
Program and Review of
Size Standards**

Office of Government Contracting
U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE
National**

SUBJECT: Size Determination Program	S.O.P.		REV
	SECTION 90	NO. 01	5
INTRODUCTION			
<ol style="list-style-type: none"> 1. <u>Purpose</u>. To outline the policies and procedures for the SBA Size Determination Program. 2. <u>Personnel Concerned</u>. All SBA employees involved in administering the Size Determination Program. 3. <u>Directives Canceled</u>. SOP 90 01 4. 4. <u>Originator</u>. Office of Government Contracting. 			
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Chapter 1

Size Determinations in General

1. What Is a Size Specialist?

A size specialist is an employee assigned to the SBA's Office of Government Contracting Area Office and reports to the Area Director. A size specialist is required to review and analyze documentation from a protested business to determine whether the company is a small business concern. For further information, see Chapters 4, 5, and 6 of this Standard Operating Procedures (SOP).

2. What Is a Small Business Concern?

A small business is an entity that:

- a) is organized for profit;
- b) has a place of business in the United States;
- c) operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor; and
- d) meets the size standard for the applicable North American Industry Classification System (NAICS) code (see Chapter 2, Paragraphs 1 and 2 for information on NAICS codes and size standards, and 13 CFR Part 121 for exceptions to this definition).

A business concern may be in the legal form of a sole proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities. In addition, certain agricultural cooperatives do qualify as eligible small businesses.

3. Why Would a Business Want to Certify Itself as Small?

A business may want to certify itself (self-certify) as small to be eligible for Government programs and preferences reserved for "small business." For instance, small business set-aside procurements are reserved for offerors or bidders who are small. Small business may also qualify for financial assistance, such as SBA loans.

4. How Does a Small Business Certify That It Is Small?

- a. For Federal Government contracts, a business self-certifies that it is small by checking the appropriate box within the bid document or registering online

through the on "Online Representation and Certification Application (ORCA)." ORCA replaces the paper version of self-certification formerly required when small businesses submitted their offers to a competitive small business contract. The self-certification is taken at face value, unless there is evidence to the contrary or a size protest is filed (see Chapter 3, Paragraph 1, What Is a Size Protest?). ORCA will be replaced by the System for Award Management (SAM) in May 2012.

- b. A business also is deemed to have certified as small by submitting a proposal for a small business set-aside, encouraging an agency to award to it as a small business, and registering in a database to receive awards as a small business.
- c. For subcontracts to large business prime contractors, a business self-certifies that it is small by checking the appropriate box on the prime contractor's size self-certification form.
- d. For other Federal programs, a business certifies that the information provided in an application is true and correct. A program official reviews that information to assess whether or not the applicant is an eligible small business. For example, when a loan officer reviews a loan application, small business eligibility is one component of the evaluation.
- e. If a small business needs to demonstrate to a particular state, city, or other non-Federal Government entity that it is small, it needs to contact the individual state or city for the applicable requirements for "small business" certification.

5. Are There Penalties or Other Remedies for Misrepresenting One's Size Status in a Size Self-Certification or for Making False Statements to SBA or Another Government Agency?

- a. There are severe criminal penalties for both knowingly misrepresenting the size status of a business (15 U.S.C. 645 (d)), and for knowingly making false statements or misrepresentations to SBA for the purpose of influencing in any way, the actions of the Small Business Administration (SBA) (15 U.S.C. 645 (a)). Chapter 7, Paragraph 4 specifies these penalties. In addition, there are severe criminal penalties when a person knowingly makes a false statement to any government agency under 18 U.S.C. 1001, such as where a company falsely self-certifies that it is small in order to obtain a small-business set-aside contract.
- b. In addition, there are various civil and administrative remedies that the Government can pursue to address such misrepresentations or false statements even though it is not clear that the misrepresentations or false statements were made knowingly. For example, the Government can bring a claim under the False Claims Act if false statements are made in order to obtain money from the

Government with a reckless disregard as to the accuracy of the statements. This has sometimes been equated with a gross negligence standard.

- c. Further, SBA (or another agency) can consider debarring a contractor if the company falsely stated that it was a small business or failed to comply with a regulation or contractual provision that applied to the contract at issue. A government contractor that is suspected of willingly misrepresenting its size should be referred to SBA's Suspension and Debarment Official (SDO) to be considered for debarment. The SDO is the Associate General Counsel for Procurement Law. If a company is debarred, it is precluded from obtaining governmental contracts and SBA's financial assistance or participating in other government programs (other than entitlement programs) for a period of time, often three years.
- d. If you suspect a business has made a false statement or misrepresented its size to SBA, or another Federal Agency, you should make a referral to the SBA Office of Inspector General (OIG) hotline by going to the OIG online hotline (see link below) or by calling 1-800-767-0385. This can help ensure a level of accountability for situations involving false statements or misrepresentations to SBA or other Federal agencies. This is critical to small business size programs. Appropriate responses either in the form of prosecution or debarment can have a deterrent effect and can enhance the ability of legitimate small businesses to obtain contracts set aside for them and to participate in other programs reserved for small businesses.

As a rule of thumb, there would be a reasonable suspicion warranting referral if it is apparent that the business *knew or should have known* that its self-certification that it was small was not credible.

For example, a business that submits a bid on a set-aside and certifies that it meets the standard (either by way of the bid form or by submitting its bid) is verifying the validity of its ORCA certification. ORCA will be replaced by the System for Award Management (SAM) in May 2012. If the size standard is employee-based but payroll records show that the company clearly exceeds the standard, then a referral to the OIG is probably appropriate. But if the business is found to be other than small based on a nuanced interpretation of the affiliation rules of which a business would not likely be aware, a referral would probably not be appropriate.

Information on how to make referrals to the OIG is available at <http://www.sba.gov/office-of-inspector-general> by clicking the link entitled "Report Fraud, Waste and Abuse."

6. When Should Adverse Information Obtained in a Size Determination Be Provided to Other SBA Offices?

While performing a size determination, if you find that the subject company is not small, and you are also aware that the firm participates in another SBA program,

such as 8(a)/Business Development (8(a)/BD), Historically Underutilized Business Zones (HUBZone), Woman-Owned Small Business (WOSB), Service Disabled Veteran-Owned Small Business (SDVOSB), Small Business Innovation Research (SBIR), or Small Business Technology Transfer (STTR), you must notify the relevant program office that the business may not be eligible for program participation because of its size. In addition, if you dismiss a protest due to lack of specificity or timeliness, and you are aware that the protested firm participates in one of these SBA programs, you should forward the protest to the relevant programs office.

7. Under What Circumstances Will SBA Make a Size Determination?

- a. SBA program officials review business size for eligibility for various SBA programs, such as Financial Assistance, Certificates of Competency (COC), 8(a)/BD, WOSB, SDVOSB, and HUBZone. Size specialists do not make these reviews. If the program office informally concludes that the business is small, no further review of size is necessary. However, if the program office concludes that the business is not small, the program office may refer the case to the appropriate Area Director for Government Contracting (AD/GC). Alternatively, the firm may be provided the opportunity to request a formal size determination.
- b. SBA will also make a formal size determination whenever a timely and specific protest or request is received (see Chapter 3, Paragraph 2 through Paragraph 5).
- c. Formal size determinations are made only with respect to eligibility for Government programs or preferences reserved for "small business." SBA will not make a formal size determination simply at the request of a firm. SBA does not provide advisory opinions about the size of a business. However, SBA will provide guidance to a business on how to self-certify.
- d. Typical situations in which SBA will make a formal size determination of a business include:
 - (1) When a SBA program office requests a size determination of a business's eligibility for a SBA program or service.
 - (2) When a business requests that SBA make a formal size determination for an application for a SBA program or service.
 - (3) When a contracting officer forwards a timely, specific size protest from an unsuccessful offeror which is entitled to file a protest (see Chapter 3, Paragraph 2 through Paragraph 4).
 - (4) When SBA receives a contracting officer's size protest.

- (5) When an official of SBA, including an official of the OIG, requests a size determination.
- (6) When another Federal Government agency requests SBA to make a size determination of a business in connection with the business application for Government programs or preferences reserved for "small business", SBA may issue Procedural Notices when necessary in support of agencies that provide benefits based on size status. (*Examples*, the Food and Drug Administration (FDA) and the Patent and Trademark Office (PTO) have a reduced fee for small businesses.) For requests from agencies other than FDA or PTO, the size specialist will forward the request to SBA Headquarters for guidance. In addition, in certain cases, Freedom of Information Act (FOIA) requirements must be adhered to when issuing size determinations.
- (7) When a court orders a size determination on a business involved in litigation.

8. Who Within SBA Will Make a Formal Size Determination?

- a. The local Area Director for Government Contracting (or designee) makes all formal size determinations, except for size determinations pertaining to the Disaster Loan Program (13 CFR 121.1002), which will be made by the Disaster Center Director (or designee). The Area Directors for Government Contracting are responsible for size determinations concerning businesses with headquarters located within their respective areas or operating sites within the geographical area (regardless of the location of the parent company or affiliates).
- b. Size determinations for disaster loan applicants will be made by the Disaster Center Director (or designee) responsible for the area where the disaster occurred.

9. What Laws and Regulations Govern SBA's Small Business Size Determinations?

Statutory authority rests in the Small Business Act at 15 U.S.C. 632(a), 634(b)(6), and 637(b)(6); SBA's small business size regulations can be found at 13 CFR Part 121; and the applicable Federal Acquisition Regulations (FAR) are located at 48 CFR Part 19.

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Chapter 2

North American Industry Classification System (NAICS) Codes and Size Standards

1. What Are North American Industry Classification System (NAICS) Codes?

NAICS codes are numerical designations of industries and types of businesses in the U.S. economy. SBA's small business size standards are matched to NAICS codes. Businesses with similar production processes are classified in the same industry. That is, they are grouped according to their similarities of the method of producing their products or providing the services they offer. The NAICS structure is a hierarchical order and uses a two- to six-digit number system to identify particular industries/business types in each hierarchy as follows:

Sector	2-digit NAICS code
Subsector	3-digit NAICS code
Industry Group	4-digit NAICS code
Industry	5-digit NAICS code
U.S. Industry	6-digit NAICS code

SBA's table of size standards covers 19 NAICS Sectors and 1,141 industries/business types. The U.S. Office of Management and Budget publishes the *North American Industry Classification System, United States*. The website address is www.census.gov/naics.

2. How Does SBA Use NAICS Codes?

- a. SBA has established a small business size standard for each U.S. NAICS industry/business type using a six-digit NAICS code. SBA does not establish size standards for Public Administration (NAICS Sector 92) which consists of government entities.
- b. For SBA's financial assistance programs, an applicant must be a small business in its primary NAICS code (see 13 CFR 121.301 and 121.107.). Applicants for SBA's 7(a) Business Loan Program and for Development Company loans (*i.e.*, 504 loans), that do not qualify for financing under their primary NAICS codes (see 13 CFR 121.301) may be eligible if they meet an alternative size standard.
- c. For Federal Government contracting, the contracting officers must designate a NAICS code and size standard for every solicitation based on the NAICS code that best reflects the principal purpose of the contract (13 CFR 121.402).

3. What Are Size Standards?

An SBA size standard represents a numerical definition of a small business. Size standards represent the maximum size a business (including its affiliates) may be to be considered “small” based on a particular NAICS code. Unless SBA specifies otherwise, a size standard is stated either in average number of employees for a 12 month period prior to the date of self-certification or in average annual receipts over the last three years prior to the date of self-certification. Receipts means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (see 13 CFR 121.104). A company must include the employees or its receipts together with those of all affiliates it may have. To determine number of employees, count all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees. (See 13 CFR 121.106). A size standard might be a number of employees (500, for example) or average annual receipts (such as \$10 million) but not both. A business concern, together with its affiliates, is small if its size is equal to or below the established size standard for the applicable NAICS code.

4. Where Are Size Standards Published?

The size standards by NAICS codes are found in 13 CFR 121.201. These are also available through the SBA's Answer Desk (800/U ASK SBA) and online on SBA's website at www.sba.gov/size. Size standards for individual programs are contained elsewhere in [13 CFR 121](#) in accordance with the following chart:

Program	CFR Location
Financial Assistance	121.301
Government Procurement	121.402
Unrestricted COCs	121.408
8(d) Subcontracts	121.410
Reserved	121.413
8(a)/Business Development	121.601
SBIR Awards	121.702
Sale or Lease of government property	121.501-512

Reduced Patent Fees Patent & Trademark Office	121.802
Other Agency Programs	121.902

5. How Does One Challenge the Selection of a NAICS Code?

- a. Any interested party who disagrees with a NAICS code designation by a contracting officer may appeal to the SBA's Office of Hearings and Appeals (OHA). However, with respect to an 8(a) sole source contract, only the Associate Administrator for Business Development may appeal.
- b. An appeal of a NAICS code designation must be served and filed with OHA within 10 business days after the issuance of the initial invitation for bids or initial request for proposals or quotations (see 13 CFR 134.304(a)(3)). OHA will dismiss untimely NAICS protests.
- c. The appeal must contain the following:
 - (1) The substance and date of the NAICS code being appealed;
 - (2) The number and date of the solicitation and the name of the contracting office that selected the NAICS code;
 - (3) The contracting officer's name, address, and telephone number;
 - (4) The reason for challenging the contracting officer's selection of the NAICS code;
 - (5) Justification supporting the appeal;
 - (6) A statement certifying that service of the appeal was sent to the contracting officer; and
 - (7) The name, address, telephone numbers, fax numbers and signature of the appellant or its attorney.

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Chapter 3

Size Protests and Requests for Size Determinations

1. What Is a Size Protest?

- a. A size protest is an allegation that a business is other than small for a particular size standard.
- b. The filing of a proper size protest requires satisfying requirements as to:
 - 1) who may initiate a size protest;
 - 2) where must a size protest be filed;
 - 3) what information must be contained in a protest;
 - 4) the time frames for submitting a protest; and
 - 5) the specificity of the protest. Paragraphs 2 through Paragraph 4 of this chapter address these requirements (also see 13 CFR 121.1001 through 121.1007).

2. Who May Initiate a Size Protest?

A size protest may only be initiated with respect to Government procurements. There are no size *protests* with respect to non-procurement SBA programs (see 13 CFR § 121.1001(a)). Note, however, that you may have a size determination *request* with respect to SBA programs (see 13 CFR § 121.1001(b), and Chapter 3, Paragraph 5.)

With respect to the following:	These persons may initiate a size protest:
Small Business Set-Aside Programs, such as WOSB and SDVOSB, and including the Federal Government Property Sales Program, or any instance in which a procurement or order has been restricted to or reserved for small business. 13 CFR 121.1001(a)(1)	<ol style="list-style-type: none"> (1) Any offeror whom the contracting officer has not eliminated for reasons other than size. (2) The contracting officer. (3) SBA's Director of Government Contracting. (4) The Area Director for Government Contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates. (5) Other interested parties. This includes (a) large businesses where only one business submitted an offer for the specific procurement in question; and, (b) a business found to be other than small in connection with the procurement where there is only one remaining offeror after that business is found to be other than small.

With respect to the following:	These persons may initiate a size protest:
SBA's Subcontracting Program (8(d)). 13 CFR § 121.1001(a)(3)	(1) The prime contractor. (2) The contracting officer. (3) Other potential subcontractors. (4) Other interested parties. (5) The Area Director for Government Contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates. (6) The Director of Government Contracting.
Small Business Innovation Research (SBIR) Program. 13 CFR § 121.1001(a)(4)	(1) A prospective offeror. (2) SBA's Division Chief for Technology. (3) The funding agreement officer. (4) The Area Director for Government Contracting (having responsibility) for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates. (5) Other interested parties.
SBA' s HUBZone Program. 13 CFR § 121.100 (a)(6)	(1) Any concern that submits an offer for a specific HUBZone set-aside contract that the contracting officer has not eliminated for reasons unrelated to size. (2) Any concern that submitted any offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC. (3) The contracting officer (4) The Director of Office of HUBZone Program, or designee.
Competitive 8(a) 13 CFR § 121.1001(a)(2)	(1) Any offeror that the contracting officer has not eliminated for reasons unrelated to size (2) The contracting officer. (3) SBA District Director, or designee, in either the district office serving the geographical area in which the procuring activity is located or the district office that services the apparent successful offeror, or the Associate Administrator for Business Development.

With respect to the following:	These persons may initiate a size protest:
Any unrestricted Government procurement in which business has represented itself as small, 13 CFR § 121.1001(a)(7). In addition, DoD's SDB programs and similar programs of another Federal Agency 13 CFR 121.1001(a)(5) and Service Disabled Veterans 13 CFR § 121.1001(a)(8).	(1) Any offeror. (2) The contracting officer. (3) The Area Director for Government Contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates. (4) SBA's Director for Government Contracting.

3. Where Must a Size Protest Be Filed?

- a. A protest must be filed with the agency contracting officer for the procurement. The agency contracting officer must forward the protest to the SBA Government Contracting Area Office serving the area in which the headquarters of the protested business is located, regardless of the location of any parent company or affiliates (13 CFR § 121.1003). For this purpose, headquarters should be interpreted as the offeror's primary address.
- b. When SBA initiates the protest, it must notify the contracting officer, but SBA does not file the protest with the contracting officer.

4. What Is Required for Submitting a Size Protest?

- a. The protest must pertain to a particular procurement or sale.
- b. The protest must be specific as to the reason and evidence relied upon for alleging that the protested business is "other than small." SBA will dismiss non-specific protests (see Chapter 4, Paragraph 2). Use the following examples as a guide:

Non-Specific	Specific
An allegation that a business is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation.	An allegation that a business is large because it employs more than 500 employees (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y.

An allegation that a business is affiliated with another business without setting forth any basis for the allegation.	An allegation that a business is affiliated with another business because a named individual is a stockholder or an officer of both businesses.
An allegation that a business is large because it has annual receipts in excess of \$10 million (where the applicable size standard is \$10 million) without setting forth any basis for the allegation.	An allegation that a business is large because it has annual receipts in excess of \$10 million (where the applicable size standard is \$10 million) because it received specified Government contracts in excess of \$10 million in each of last three years.

- c. The protest must not be premature. A protest is premature if filed before bid opening or before notification to offerors of the selection of the apparent successful offeror. SBA will dismiss premature protests, even when filed by the Contracting Officer (see Chapter 4, Paragraph 2).
- d. The protest must be timely and must be delivered by mail, facsimile, overnight delivery service, e-mail, or telephone. If a protest is made by telephone, the contracting officer must receive a confirming letter from the protestor either within the 5-day period, (discussed in (1) and (2) below), or postmarked no later than 1 day after the date of the telephone protest. SBA will dismiss untimely protests (see Chapter 4, Paragraph 2).
- (1) With respect to non-negotiated procurements or sales (e.g., IFB/sealed bid procurements or proposals that are accepted without negotiation), timely protests must be filed within 5 working days after bid or proposal opening or subsequent identification of low bidder.
 - (2) With respect to negotiated procurements or sales (e.g., RFPs, RFQs), timely protests must be filed within 5 working days after receipt of the contracting officer's notification to the protestor of the identity of the prospective awardee.
 - (3) With respect to long-term contracts of more than five years (including options), including all existing long term contracts, Multiple Award Schedule (MAS) Contracts, Multiple Agency Contracts (MACs), and Government-wide Acquisition Contracts (GWACs), see 13 CFR § 1211.1004(a)(3).
 - (4) A protest by the SBA Director of Government Contracting, the Area Director of Government Contracting, or contracting officer is always timely, as long as it is not premature.
 - (5) If a protest is timely filed, the determination will apply to that procurement even if the contract has been awarded.

5. Who may initiate a size protest or request a formal size determination?

Protests involve procurement programs only. Formal size determinations may also be requested for other Federal programs.

Who may initiate a protest or request a formal size determination will depend on the program.

Refer to [13 CFR § 121.1001](#).

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Chapter 4

Beginning a Formal Size Determination

1. **As a Size Determination Specialist, What Must I Do When I Receive a Size Protest?**
 - a. Verify that the headquarters of the business whose size is protested is located within your area (regardless of the location of the parent company or affiliates of the protested business).
 - b. Verify that you have all of the following information:
 - (1) A copy of the protest;
 - (2) The name of the business, point of contact (including fax number and email address), mailing address, of both the business being protested and the person filing the protest;
 - (3) The date that the contracting officer received the protest (unless the protest is a contracting officer's protest);
 - (4) A copy of the solicitation containing the solicitation number, the NAICS code and size standard;
 - (5) The size standard, the business self-certification, and the date of the self-certification or a copy of its Online Representation and Certification Application (ORCA). (ORCA will be replaced by the System for Award Management (SAM) in May 2012);
 - (6) The contracting officer's name, mailing address, telephone number, and fax number or email address; and
 - (7) The date of bid opening in sealed bid procurement or the date of the protestor's receipt of the contracting officer's notification on a negotiated procurement.
 - c. Determine that the protest is not premature (see Chapter 3, Paragraph 4c).
 - d. Determine whether the person filing the protest is entitled to initiate the protest (see Chapter 3, Paragraph 2).
 - e. Determine whether the protest is timely (see Chapter 3, Paragraph 4d).
 - f. Determine whether the protest is specific (see Chapter 3, Paragraph 4b).
 - g. Assign a number to the case as follows:

Area Office that Processed the Request	Fiscal Year When It Was Received	Sequential Case Number for that FY
--	----------------------------------	------------------------------------

Separate each component with a hyphen, so it reads as follows, for example:

03-20XX-123

This example would represent a case processed by Area Office 3, during FY xx, and it is case 123. Case numbers begin each year with the number 001.

- h. Since the Size Determination Information System (SDIS) is not operating, each Government Contracting Area Office must maintain its own (manual or electronic) log until SBA creates another database system. Each Area's log should be uploaded into Sharepoint for HQ visibility.

2. Under What Circumstances Is a Size Protest Dismissed?

- a. If a size protest is premature, not timely, non-specific, or is filed by a person who is not entitled to initiate a protest, you must dismiss the protest (see 13 CFR § 121.1004(d) and (e), 121.1007, and 121.1001). Before you dismiss the protest, you must consider if the protest has merit (and is not premature), and if so, consider asking your Area Director or the SBA Director of Government Contracting to file a specific protest.
- b. Prepare a letter citing the reasons for dismissing the protest (see Appendix 2, Sample Dismissal Letters). The Area Director for Government Contracting (or designee) must sign the dismissal letter.
- c. You must send the dismissal letter, in a verifiable manner such as certified mail return receipt requested or overnight mail, to the person who filed the protest. Enclose a copy of 13 CFR Parts 121 and 134 (see 13 CFR § 121.1009(f)).
- d. You must send a copy of the dismissal letter, in a verifiable manner, to the contracting officer and to the protested concern.
- e. You must document the file by including a copy of the dismissal letter in Section 4 of the file, as well as any proof of mailing and receipts (see Paragraphs 5-9 for details on the organization of the file).

3. What Must I Do When I Receive a Request for a Size Determination?

- a. You must verify that the headquarters of the business whose size you are asked to determine is located within your area (regardless of the location of the parent company or affiliates).
- b. You must verify that you have the following information:
 - (1) The name of the business, point of contact (including fax number and email address), and mailing address of the business;
 - (2) The applicable NAICS code and applicable size standard, as determined, by the program for which the request for size determination is being made; and
 - (3) The reason a size determination is being requested.
- c. You must verify that the person requesting the size determination is eligible to request a size determination (see Chapter 3, Paragraph 5).
- d. You must assign a number and enter the case into the manual or electronic log (see Chapter 4, Paragraph 1g).

4. How Do I Handle Food and Drug Administration (FDA) Size Determination Cases?

Confidentiality is central to these cases, and a size determination must not disclose information that might harm the firm whose size you are reviewing. The FDA requests that SBA handle all cases involving FDA with care. Harm could come to a firm if it became known that it was ready to apply to FDA for drug approval or device reporting, and this could result in a violation of the Trade Secrets Act.

Consequently, FDA regulations prohibit government disclosure of any information that would reveal the existence of a pending human drug application, unless the existence of the application has been previously disclosed or acknowledged. [21 C.F.R § 314.430](#). A firm's decision to file an application with or report to FDA and all information in the application are considered confidential commercial information under the Freedom of Information Act (FOIA), Trade Secrets Act, and FDA regulations. Because of this, SBA cannot even confirm or deny the existence of a pending size determination referred by FDA.

To ensure strict confidentiality, the following procedures must be followed when an SBA Government Contracting Area Office receives a formal size determination request from FDA:

- a. Log the case into the size log, so that it has a number. Generally, do not enter the firm's name in the log unless it is critical to inter-office case tracking. If the name of the company is noted, make sure to clearly note beside the name that this information is strictly protected from release. If the name of the firm is not critical to inter-office case tracking, simply assign a number and make a notation that this is a referral from FDA. You do not need to enter any information concerning the size determination since this information can be looked up manually in the case file.
- b. Refer FOIA requests directly to FDA at the address provided in its referral letter without disclosing any information. All FOIA requests must be in writing. Notify the requester that the request has been referred to FDA
- c. Do not confirm or deny the existence of the size case on the phone. A suggested response is "SBA does not respond to oral requests for information. Your request must be in writing." Do not refer any callers to FDA. If you were to do so, it would confirm that SBA is making a size determination of the firm inquired about and one could infer that FDA has a firm's application.

5. What Size Standard Must I Use When Making a Size Determination?

- a. For size determinations involving a particular solicitation or procurement (*e.g.*, a small business set-aside; an 8(a) contract; WOSB contract, SDVOSB contract, or a COC application), use the size standard which corresponds to the NAICS code listed in the solicitation, which was applicable on the date of the self-certification. SBA only has the authority to supply an unclear, incomplete, or missing NAICS code. The Area Offices may not correct a NAICS code in a size determination, even when it is wrong, because that NAICS codes was not appealed to OHA by any parties. 13 CFR 121.402(d). NAICS codes and size standards are amended from time to time. You must apply the NAICS code and size standard in effect at the time the solicitation was issued.
- b. Where no specific solicitation or procurement is involved (*e.g.*, 8(a) eligibility, Financial Assistance), use the size standard for the business' primary NAICS code or the NAICS code chosen by the program official. If the Size Specialist finds that the specified primary NAICS code does not seem appropriate (or the use of the size standard exception associated with the NAICS code), the Size Specialist should first try to work with the requesting program official to determine the company's true primary NAICS, taking into consideration the regulations at 13 CFR 121.107. The program may request that you confirm the business's primary NAICS code or primary industry.

- c. For additional information, see Paragraphs 2-3 of this chapter, immediately above.

6. What Date Must I Use in Making the Size Determination?

With respect to:	Determine size as of:
Procurements	The date the business submitted its written self-certification that it is small as part of its initial offer (or other formal response to a solicitation) which includes price.
Certificates of Competency (unrestricted procurements)	The date of the application for a COC.
Small Business Innovation Research (SBIR) Program	The date of the award. (If award is pending, use the date of the request.)
Compliance with the Non-manufacturer Rule	The date of the final proposal revision for negotiated acquisitions and final bid for sealed bidding.
Ostensible Subcontractor Rule	The date of the final proposal revision for negotiated acquisitions and final bid for sealed bidding.
Financial Assistance Programs (except Preferred Lenders Program)	The date the application for financial assistance is accepted for processing by SBA except for applications under the Preferred Lenders Program (PLP), the Disaster Loan program, the SBIC program, and the New Markets Venture Capital (NMCV) program. See 13 CFR § 121.302 for further direction.
Preferred Lenders Program	The date of approval of the loan by the Preferred Lender.
8(a) BD Initial Eligibility	The date of the application and certification (13 CFR § 121.404(b)).
SDB	The date of the request for the size determination.
HUBZone	The date of application and certification (13 CFR § 121.404(b)).
Recertification	The date of the recertification request. Note that a request for a size re-certification shall include the size standard in effect at the time of re-certification that corresponds to the NAICS code that that was initially assigned to the contract

7. What Information Do I Need to Convey to the Business That Is the Subject of a Size Protest or a Request for a Size Determination? Do I notify others?

- a. Advise the business of the size protest or request for size determination and that it must respond to SBA in a timely manner. Advise the business of the possible consequences if it does not respond. The facts of the procurement and the protest or request will dictate which initial letter you must send (see Appendix 3, Sample Initial Letters a through p).
- b. For instance, if the business whose size is being protested will be supplying the product of another manufacturer, you must send the Non-manufacturer initial letter (see Appendix 3, Sample Initial Letter c).
- c. Or, if a request for a size determination was made by SBA's Office of Business Development (BD) in connection with a business's initial eligibility for the 8(a)/BD Program, you must send either the 8(a) Eligibility/Average Annual Receipts initial letter, or the 8(a) Eligibility/Number of Employees Initial Letter; whichever is appropriate (see Appendix 3, Sample Initial Letters e and f).
- d. With the initial letter, you must include the following:
 - (1) Copy of the protest or request, including all attachments. Include only information submitted with the initial size protest.
 - (2) SBA Form 355, Information for Small Business Size Determination, Appendix 4;
 - (3) Notification to the protested entity where it can find SBA's Small Business Size Regulations ([13 CFR part 121](#))
 - (4) Notification to the protested entity where it can find more information about affiliation, with examples, including at least the following:
 - a. [13 CFR § 121.103](#); and,
 - b. SBA's discussion of and examples of affiliation at www.sba.gov/size or at Appendix 8 to this SOP.
 - (5) Internal Revenue Service (IRS) Form 4506, "Request for Copy" or "Transcript of Tax Form."
- e. You must send the initial letter in a verifiable overnight manner (*e.g.*, UPS or FedEx).
- f. You must also send a copy of the initial letter to the contracting officer (if applicable) and the person who filed the protest or made the request. This copy may be transmitted by fax or e-mail.

8. How Many Days Does the Business Have to Respond to the Initial Letter?

- a. With respect to active procurements, the business must respond within 3 working days from receipt of SBA's initial letter unless you grant an extension of time from the protested party because the business presented you, in writing, with a good cause for an extension (see (13 CFR § 121.1008(c)). (See Paragraph 5 in Chapter 1 regarding the consequence for a business's failure to respond timely.)
- b. There are no time constraints with respect to financial assistance, 8(a), SDB, HUBZone, WOSB, or SDVOSB size determinations that do not relate to a specific procurement. Extensions may be granted at the discretion of the SBA Government Contracting Area Office. The specific program office should be kept informed.

9. How Do I Organize the File?

- a. Create a four-section file and, at a minimum, include the following information on the cover:
 - (1) Business name;
 - (2) City and State where the business is located; and
 - (3) Case number.
- b. The four sections of the file are:
 - (1) Section 1, containing the referral, the protest, and all SBA initial correspondence;
 - (2) Section 2, containing the business response;
 - (3) Section 3, containing the continuation of the business response and other miscellaneous papers; and
 - (4) Section 4, containing the determination, forwarding letters, and appeal material.

10. What Do I Keep in the Size Case Log?

You must keep an up-to-date database of the size determination cases you process. (Keep this database locally, *i.e.*, in your Area Office, until SBA installs a new national database from HQ). SBA's Office of Size Standards may periodically request this information from you so that it can update the "Businesses Determined Other Than Small" page on its website at <http://www.sba.gov/size>.

In the Area Office's size log, at a minimum, include the following information:

- a. Size determination case number;
 - b. Name, city and state of the business whose size is being determined;
 - c. DUNS number of company's whose size is at issue;
 - d. The last name of the person who will render the size determination;
 - e. The date the protest or request was received by the Area Office for Government Contracting;
 - f. The NAICS code and applicable size standard;
 - g. Type of procurement or request (i.e., small business set-aside, DPCE request);
 - h. The due date of the size determination;
 - i. Extensions, if granted;
 - j. Size Determination Result (i.e., SB, OTS, Dismissed, OTS-for this procurement, withdrawn);
 - k. Date Size Determination is rendered;
 - l. Date of *Notice of Order* from OHA Appeal, if applicable; and
 - m. OHA decision and date of decision (i.e., remanded, upheld).
11. **How Do I Enter an "Other Than Small" Size Determination into the Dynamic Small Business Search (DSBS) Database?**

If a company is found "other than small," the Size Specialist should immediately make a notation to the affected company's DSBS profile. See example below. To do this, the Size Specialist must:

- Log in to the General Login System (GLS). You will need to have permission to "PRONET PROTEST ADMIN." A Size Specialist is only permitted to make changes to companies within their own Area's geographic territory;
- You must then enter the "Company ID" or "DUNS" number of the company whose DSBS profile you will be annotating;
- Input the size of the company in the "SBA Formal Size Determinations" field;
- Input the date of the Size Determination in the "SBA Formal Size Determination Date" field; and

- Input an explanation on “SBA Formal Size Determination Reasons” field.

The input in the “Sizes from CCR” and “SBA Formal Size Determination Date” fields will make a change to the company’s size classifications within DSBS. CCR will be replaced by the System for Award Management (SAM) in May 2012,

If a company was found “other than small” because it failed to respond, then in the “SBA Formal Size Determinations” field, the Size Specialist should input a value just larger than the size standard. For instance, if a company was found “other than small” for the \$7 million size standard, the Size Specialist would enter \$7,000,001 for the company’s revenue. See “SBA Formal Size Determinations” field shown below. If you know the company’s exact revenue or employees from information submitted during the size review process, the company’s true revenue/employees should be entered.

Updating SBA Profile for P0623965 - Microsoft Internet Explorer provided by SBA

https://pro-net.sba.gov/pro-net/update/dsp_editprofile.cfm?GoToType=Protest&CFID=12430235&CFTOKEN=7fb4at

Skip Navigation Accessibility Options

SBA SBSS Admin Search Admin Print Exit Help Ready

You are now editing profile P0623965

Switch to Text Only
Switch to No Frames

Expand Collapse

P0623965

- Admin Only
 - Protests
 - Identification Data
 - From CCR
 - Products & Services
 - General

Size and Category Protests

Name and Address MEDLEY MATERIAL HANDLING INC.
(dba: MEDLEY MATERIAL HANDLING COMPANY)
4201 WILL ROGERS PKWY
OKLAHOMA CITY, OK 73108-2039

GCA: 5

Size Protests:

Code	Prim./Sec.	Year	Small	Description	Revenue	Employees	Barrels of Oil	Meg
Sizes from CCR:					\$2,790,000	39	0	
SBA Formal Size Determinations:					\$7,000,001			
SBA Formal Size Determination Date:					03/21/2011	(Note: If left blank, today's date is assumed.)		
SBA Formal Size Determination Reason(s):					Medley Material Handling was found to exceed the \$7 million size standa			
423830	Primary	2007	Y	Industrial Machinery and Equipment Merchant		500		

> FirstGov > E-Gov > Regulations.gov > White House
* Privacy & Security * Information Quality * FOIA * No Fear Act * ADA

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Page: 3 of 3 Words: 729

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12. How Many Days Do I Have to Complete the Size Determination?

- a. In connection with procurements, you have 15 business days from the date a complete protest was received to complete the size determination and inform the contracting officer of the size determination, unless you obtain additional time from the contracting officer (FAR 19.302(g) and (h)). (See Chapter 7, Paragraph 5 for information on the effect of a size determination on the contracting officer's actions.)
- b. You must confirm extensions of time in writing with the contracting officer.
- c. Alternatively, if you have electronic communications capability with the contracting officer, you may receive the contracting officer's letter granting an extension, or transmit a letter confirming the verbal extension to the contracting officer electronically, as long as you print a copy of it and place it in the file. An electronic or paper copy must also be sent to both the business whose size is being determined and the business who initiated the protest.
- d. On the other hand, if your request for additional time is denied by the contracting officer, you must also include in the file the date you requested the extension; the name of the person you spoke to; and, the date the extension was denied. You must then make all attempts to complete the size determination within the initial 15-day time frame. However, if this time frame is impossible, document the file with reasons the deadline could not be met.
- e. In connection with other programs, you must negotiate the time with the SBA program official (*e.g.*, 8(a)/BD, WOSB, SDVOSB, *etc.*) or Federal agency (*e.g.*, FDA).

13. What Are the Consequences If a Size Determination Cannot Be Completed Within the Deadline?

The contracting officer may award the contract, which could result in the contract being awarded to a business that is other than small. (See Chapter 7, Paragraph 5 for information on the effect of a size determination on the contracting officer's actions.)

Depending on the facts, the contracting officer may have to apply a size determination received after award to the procurement in question, by terminating the award or not exercising the next option. In all cases, the contracting officer must reflect the concern's size status in Federal procurement databases and goaling statistics.

Chapter 5

Making a Formal Size Determination

1. What If a Business Does Not Respond in a Timely Manner to SBA's Request for Size Information or Does Not Provide All Information Requested?

SBA may assume that the business that failed to respond, or failed to provide all information by the time specified (in the absence of an extension), is other than small (13 CFR § 121.1008(d)).

2. What Must I Do When I Receive a Response from the Business?

You must review the information and determine if the business meets the criteria of a small business as provided in the regulations at 13 CFR §§ 121.101 through 121.904. You will need to:

- a. Determine whether the business is eligible for SBA assistance. Refer to 13 CFR § 121.105 for guidance on eligibility as a small business concern.
- b. Determine if the business is affiliated with other businesses. (See Paragraph 5-6, and refer to 13 CFR § 121.103 for guidance on affiliation).
- c. Calculate the business average annual receipts (see Paragraph 5-3) or number of employees (see Paragraph 5-5). These calculations must include any affiliates. Which calculation you perform will depend upon the applicable size standard (Paragraph 4-5 discusses how to determine the applicable size standard).
- d. Consider any applicable decisions made by the Office of Hearings and Appeals (OHA). You can view all past cases and the latest entries on OHA's website at www.sba.gov/oha.

3. How Do I Calculate Average Annual Receipts?

You must calculate average annual receipts by using the firm's and its affiliates' Federal income tax returns for the last 3 completed fiscal years. Receipts mean gross or total income plus the cost of goods sold. This includes receipts from rents, fees, commissions, and other income. If a tax return is not yet available, you may accept financial statements, or if not available, a certified statement from the firm's accountant, financial officer, *etc.* (13 CFR § 121.104 further defines receipts, periods of measurement, and how to calculate receipts for a firm in business less than three years or having a short year, and affiliates' receipts).

4. How Do I Calculate Number of Employees?

Number of employees is based on the average number of employees, including employees of domestic and foreign affiliates, for the preceding completed 12 calendar months. Part-time and temporary employees are counted the same as full-time employees (13 CFR § 121.106 further explains the calculation of average number of employees).

5. What Is Affiliation?

- a. As the size determination specialist, you determine if affiliation exists. Generally, affiliation is present when one business controls or has the power to control the other, or when a third party (or parties) controls or has the power to control both businesses. The mere existence of the power to control a business is sufficient to assume affiliation – it need not be exercised.
- b. Refer to 13 CFR § 121.103 for details on what constitutes affiliation. Some factors mentioned are:
 - (1) Stock ownership (13 CFR § 121.103(c)). You must consider whether a person owns or controls, or has the power to control, 50 percent or more of the voting stock of a firm. If so, that person is considered to have the power to control that firm. You must also consider instances of two or more persons where each owns and controls, or has the power to control, less than 50 percent of the voting stock of a firm. In those instances, determine whether the aggregate of these holdings is large as compared with other stock holdings. If so, those persons are considered to control that firm. Any other firms these persons own or control are considered affiliates of the applicant.
 - (2) Stock options, convertible securities, and agreements to merge (13 CFR § 121.103(d)). Treat these as though the rights granted have been exercised. Give present effect to an agreement to merge or sell stock whether such agreement is unconditional, conditional, or finalized but unexecuted. If these rights have been granted, affiliation exists. Power to control is presumed based on the preferred rights of the holders of these securities.
 - (3) Common management (13 CFR § 121.103(e)). Consider whether one or more officers, directors or general partners of the firm controls the board of directors and/or the management of another firm. If so, the firms are affiliates. This is direct influence over the conduct of the small business.
 - (4) Previous business relationships or ties with another business, including family relationships (13 CFR § 121.103(f)). You must obtain detailed explanations and documentation from the firm on these issues. There is

no specific formula for finding indicators of affiliation in some of these complex areas. Some tools to use may be commercial credit reports, loan agreements, annual reports, bylaws, or advertising. Through your research, you may discover patterns of subcontracting, information from buying activities regarding joint representations of the firms, commingling of staff and/or facilities, and other veiled attempts to disguise the true nature of the relationship. Persons with an identity of interest, such as family members or persons with common investments in more than one concern, may be treated as though they are one party, unless they demonstrate otherwise.

- (5) Contractual relationships or economic dependency (13 CFR § 121.103(a), (f) and (g)). Consider whether a firm can survive on its own or if it is economically dependent upon another firm. If there is a contractual relationship between two firms for the procurement in question, you need to examine the possibility of affiliation.
- (6) Joint venture arrangements (13 CFR § 121.103(f)). Firms are affiliated if they are seeking SBA financial assistance for use in connection with the joint venture or if they are bidding on a particular procurement or property sale as joint ventures. There are certain exceptions to this rule.
- (7) Ostensible subcontractors (13 CFR § 121.103(f)). This refers to instances in which the prime contractor is unusually reliant upon the subcontractor or if the subcontractor will perform primary and vital requirements of a contract. To determine if ostensible subcontracting exists, you must thoroughly review the Statement of Work, subcontractor agreements, and the technical and cost proposal. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of the subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or the teaming agreement), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation. Factors that may be relevant include:
 - (a) Who will manage the contract?
 - (b) Which party possesses the requisite background and expertise to perform the contract?
 - (c) Which party chased the contract?
 - (d) What degree of collaboration was there on the proposal?

- (e) Are discrete tasks to be performed by each, as opposed to a commingling of personnel and material?
 - (f) What amount of work is to be performed by each?
 - (g) Which party performs the more complex and costly contract functions?
- (8) Franchise or license agreements (13 CFR § 121.103(i)).

Determine if the Franchise is listed in SBA's Franchise Registry (www.franchiseregistry.com). Review the information presented there. This will give you an idea of whether SBA has ever considered this franchise.

A company that appears in the franchise registry does not relieve the Area Office of its responsibility of determining affiliation and control. The restraints imposed on a franchisee or licensee by its agreement relating to standardized quality, advertising, accounting format, and other similar provisions, are usually not considered in determining affiliation provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.

Affiliation based on other issues, such as common ownership, common management, or excessive restrictions upon the sale of the franchise interest, can still be found (see SOP 70 50, Appendix 3d "Franchise Eligibility Guidelines").

- (9) A firm will not be treated as a separate business concern if a substantial portion of its assets and/or liabilities are the same as those of a predecessor entity. A newly organized concern consisting of former officers, directors, principle shareholders, managing members, or key employees of another concern, and receiving a significant level of assistance from the predecessor, will be considered affiliates of each other unless a clear line of fracture is demonstrated. In such a case, annual receipts and employees of the predecessor will have to be taken into account in determining size.
- (10) Totality of the Circumstances. OHA has explained that SBA may find firms affiliated under the totality of the circumstances if "the interactions between the businesses are so suggestive of reliance as to render the firms affiliates. Although the evidence in the record may not establish affiliation under one of the specific factors enumerated in the regulation, a review of all the factors may lead to the conclusion one business has the power to control the other and, thus, both are affiliated." [*Size Appeal of Diverse Constr. Group, LLC, SBA SIZ-5112*](#), at 7 (2010).

- c. Determining affiliation between two or among more than two entities can be very difficult at times. Therefore, this SOP includes as Appendix 8 a further discussion on the subject of affiliation. The discussion is also available SBA's website at www.sba.gov/size.
- d. You must also refer to 13 CFR § 121.103(b) for the exceptions from affiliation.

6. What Are the Possible Size Determinations That I May Make?

- a. You may determine that the business is:
 - (1) Small;
 - (2) Other than small; or
 - (3) Other than small for the concerned procurement only.
 - (4) You may also make eligibility determinations for a mentor-protégé joint venture outside of the 8(a) program, § 121.103(h)(3)(iii), and for an SBIR or STTR applicant, § 121.702.
- b. Your determination will be based on whether the business is eligible for SBA contracting and financial assistance and your calculation of the business (including any affiliates') average annual receipts or number of employees.
 - (1) If the business is eligible for SBA contracting and financial assistance and its average annual receipts or number of employees do not exceed the applicable size standard, you will determine the business to be small.
 - (2) If the business is not eligible for SBA contracting and financial assistance and/or its average annual receipts or number of employees exceeds the applicable size standard, you will determine the business to be either "other than small" or "other than small for this procurement only."
 - (3) You must use the "other than small for this procurement only" designation if the circumstances leading to the determination are specific to the solicitation. Examples include non-compliance with the nonmanufacturer rule and when a business is found to be affiliated with an "ostensible subcontractor" or a joint venture partner, and as a result of the affiliation, the business average annual receipts or number of employees exceeds the applicable size standard. In such an instance, the business would be determined "other than small for this procurement only," since the affiliation exists solely with respect to the procurement.

7. What Is the Format for Writing a Formal Size Determination?

- a. Write the decision in a clear, concise manner. It should include the following: an introduction; a discussion of the evidence which addresses all of the allegations; applicable regulations and citation to OHA decisions; a logical reasoning for the decision; and, a conclusion (see Appendix 5, Sample Size Determination Format). The size determination must be signed by the Area Director for Government Contracting or designee.
- b. Avoid specifying number of employees or its annual receipts for the business (due to the protections of the Freedom of Information Act (FOIA)). Instead, you should make summary statements such as "the business average annual receipts are less than the applicable size standard of \$ XX million; or exceed the applicable size standard of \$ XX million."
- c. Avoid disclosing specific information from a firm's proposal that is protected.
- d. When issuing an adverse size determination, you must include the following paragraph:

Small businesses that believe they have been subject to excessive or unfair regulatory enforcement or compliance actions as a result of this decision have the right under the Small Business Regulatory Fairness Act to file a complaint or comment with the SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration
409 Third Street SW
Washington, DC 20416
Phone: 1-888-734-3247
Fax: 1-202-481-5719
Email: ombudsman@sba.gov

The right to file a complaint or comment with the SBA National Ombudsman is independent of any other rights you have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement or impede any administrative or criminal process.

Chapter 6

Completing the Formal Size Determination

1. What Must I Do Once I Have Written the Size Determination?

- a. Prepare a notification letter (see Appendix 6 for sample notification letters a through h) informing the business of the determination and of its right to file an appeal petition OHA (see Chapter 8 regarding appeal petitions and OHA). Your size determination and the notification letter must be signed by the Area Director for Government Contracting or designee.
- b. Send the size determination and the notification letter in a verifiable fashion in accordance with § 121.1009 to:
 - (1) The business that was the subject of the size determination;
 - (2) Any persons found to be affiliated with the business;
 - (3) The person who filed the protest or made the request;
 - (4) The contracting officer; and
 - (5) The specific program office, if the determination relates to an 8(a), SDB, SBIR, HUBZone, WOSB, or SDVOSB concern.

2. How Can I Correct an Administrative or Factual Error in My Size Determination?

If your size determination contains a clear administrative error or a clear mistake of fact, you should reopen the size determination to correct the error or mistake provided an appeal has not been filed. However, you should first vacate your original determination by writing to all parties involved that a mistake has been made. You must also notify OHA if the case has been appealed so that OHA can then determine whether to remand the case to your office for another review. You do not reopen a size determination if OHA has accepted the case for review.

Once SBA has issued a final decision (either a formal size determination that is not timely appealed or an appellate decision), SBA cannot reopen the size determination.

3. How Do I Update the File and the Size Log ?

- a. File a copy of the size determination and notification letter in Section 4 of the file (see Chapter 4, Paragraph 9 regarding organization of the file). You must also file in Section 4 a copy of proof of mailing and any return receipts (or fax confirmation pages).

- b. Update the size log by entering the following information:
 - (1) If applicable, an extended due date.
 - (2) The date the size determination was completed.
 - (3) The decision.

4. How Long Must I Keep the Written File?

You must keep the written file for 2 years from the date of the final size determination. At the end of the 2 years, you must transfer the file to Federal Records Center (FRC) for an additional 4 years. The file may be destroyed 6 years after the date of the final size determination (see SOP 00 41).

Chapter 7

Significance of a Formal Size Determination

1. What Is the Significance of Being Found Small?

A business found to be small has met the "small business" eligibility requirements of the Federal government contract or program for which it applied.

2. What Is the Significance of Being Found Other Than Small?

A business found other than small has not satisfied the "small business" eligibility requirements of the Federal government contract or program for which it applied. As a result, without first obtaining recertification (see Paragraph 3 below) or prevailing in an OHA appeal, the business cannot self-certify that it is small at the same size standard (or a smaller size standard) for which it was found other than small.

3. What Is Recertification?

A business that has been found other than small may request to have its size status reconsidered, if the reasons for the adverse size determination no longer exist. This is called recertification. The request for recertification must include a current completed SBA Form 355, Information for Small Business Size Determination. It must also include any pertinent information that shows it has overcome elements that resulted in its finding of other than small. SBA will then make a new size determination.

4. What Are the Penalties or Other Remedies for Misrepresenting One's Size Status in a Size Self-Certification or for Making False Statements to SBA or Another Government Agency?

Also see Chapter 1, Paragraph 5.

a. Criminal penalties include:

- (1) A fine of not more than \$500,000 and/or imprisonment for not more than 10 years for knowingly misrepresenting the small business size status of a business in connection with procurement programs (other laws may also apply). See Section 16(d) of the Small Business Act, 15 U.S.C. 645(d) and 18 U.S.C. 1001.
- (2) A fine of not more than \$5,000 and/or imprisonment for not more than 2 years for knowingly making false statements or misrepresentations to SBA for the purpose of influencing, in any way, the actions of the Agency (other laws may also apply). See Section 16(a) of the Small Business Act, 15 U.S.C. 645(a).

- b. Civil and administrative penalties include:
- (1) Civil remedies prescribed by the Program Fraud Civil Remedies Act (PFCRA) of 1986 (31 U.S.C. 3801-3812). Under the PFCRA, Agencies may pursue contractors in an administrative proceeding for a civil penalty of \$5,000 per claim in addition to an assessment of up to double the amount claimed under a contract, if the Agency has made payment.
 - (2) Suspension and debarment as specified in Subpart 9.4 of Title 48, CFR. Suspension or debarment generally precludes a contractor from receiving new contracts while one of those exclusions is in place for a period of time, generally three years.
 - (3) Penalties and civil remedies provided under the False Claims Act (31 U.S.C. 3729, et seq.). The False Claims Act allows the Government to sue contractors for treble damages and a civil penalty of up to \$11,000. SBA contends that the full contract value of any contract a company received by virtue of a false size certification is the proper amount of damages when considering a False Claims Act case.

5. What Is the Effect of a Size Determination on the Contracting Officer's Actions with Respect to a Particular Procurement?

- a. The contracting officer should wait 15 business days (or longer, if extensions are granted) for the completion of SBA's size determination (13 CFR § 121.1009).
- b. Absent the unusual circumstance described above, the contracting officer must not award a small business set-aside contract to a business found to be other than small, and must award the small business set-aside contract to a business found to be small (unless objections other than size are found requiring denial of the award).
- c. After receiving the results of a size determination, the contracting officer is not required to wait any additional time to see if there will be an appeal petition filed with OHA . The contracting officer may immediately proceed with award of the contract following receipt of the size determination (see Chapter 8, Paragraph 7 regarding what impact an appeal petition could have on the procurement).
- d. If a contracting officer receives a determination after award finding the awardee other than small, and no OHA appeal has been filed, the contracting officer shall terminate the award. If a timely OHA appeal is filed, the contracting officer must consider whether performance can be suspended until OHA's decision. If OHA affirms the decision, the contracting officer shall either terminate the contract or—provided the contract has annual options—not exercise the next option.

- e. The contracting officer must update FPDS-NG and other procurement reporting databases to reflect SBA's final decision, either the OHA decision or the determination if no appeal was filed. The databases should be updated to reflect the size status for the award.

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Chapter 8

Size Appeal Petitions to the Office of Hearings and Appeals (OHA)

1. What Is a Size Appeal Petition?

- a. A size appeal petition is a written argument submitted to OHA in support of the position that an SBA size determination is incorrect.
- b. There are requirements as to 1) who may file an appeal petition; 2) where and how a petition must be filed; 3) what information must be contained in the petition; and, 4) the time frames for filing the petition. Paragraphs 3 and 4 of this chapter address these requirements (see 13 CFR §§ 134.301 through 134.318).

2. What Is OHA?

OHA is SBA's Office of Hearings and Appeals, an independent appellate administrative tribunal. One of its responsibilities is to hear appeals concerning SBA's formal size determinations.

3. Who May File a Size Appeal Petition with OHA?

- a. Any person adversely affected by a size determination;
- b. The Associate Administrator or Director for the SBA program; and
- c. The procuring agency's contracting officer responsible for the procurement affected by the size determination.

4. How Is a Size Appeal Petition Filed with OHA?

- a. An appeal from a size determination starts with the timely serving and filing of an appeal petition with the Docket Clerk of OHA at the Office of Hearings and Appeals, U.S. Small Business Administration, Mail Code 2440, 409 Third Street, S.W., Washington, DC 20416 (13 CFR § 134.204 contains the service and filing requirements). Appeals may be delivered by mail, fax, or e-mail.
- b. Title 13 CFR §§ 134.304 and 134.305 contain the information about timeframes and what the appeal petition must contain. Specifically,
 - 1) Size appeals must be filed within 15 calendar days after receipt of the formal size determination.
 - 2) NAICS code appeals must be filed within 10 calendar days after issuance of the solicitation, or amendment to the solicitation affecting the NAICS code or size

standard. However, SBA may file a NAICS code appeal at any time before offers or bids are due.

- 3) An untimely appeal will be dismissed.

5. As a Size Specialist, What Must I Do If an Appeal Petition Is Filed with OHA?

- a. Upon receipt of an appeal petition, and in response to a request by OHA, the Area Office for Government Contracting which issued the size determination must immediately send to OHA (in a verifiable manner) the entire original case file relating to the size determination. (Make a copy of pertinent portions of the file and keep it in case the original is lost.)
- b. You must also update the size protest log by entering the date the case file was sent to OHA (see Chapter 4, Paragraph 10 regarding the database). Following OHA's decision, you must again update the size database to reflect the decision, the date of OHA's decision, and OHA's decision number.

6. What Impact Does an Appeal Petition Have on the Subject Procurement?

A contracting officer may award a contract to a protested concern after the SBA Area Office has determined either that the protested concern is an eligible small business or has dismissed all protests against it. If OHA subsequently overturns the Area Office's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question. Refer to [13 CFR § 121.1009](#) for the balance of the results of an SBA size determination.

7. What Outcomes Are Possible from an Appeal?

- a. If OHA accepts the appeal petition for review, it may affirm, in whole or in part, the size determination, reverse the size determination, or remand the case for further review or for further information. Beyond OHA, there is no further review within SBA.
- b. If the case is remanded, you must contact the contracting officer immediately to determine the time frame in which a new determination will be made. If the contract has already been awarded, the contracting officer may give you more than 15 business days. If the contract has not been awarded, you must receive a minimum of 15 business days. A remand by OHA vacates the initial size determination.

Chapter 9

Freedom of Information Act (FOIA) Requests

1. What Must I Do When I Receive a FOIA Request?

Prior to issuing any information in response to a FOIA request, you must review the Disclosure of Information SOP (SOP 40 03) and 13 CFR part 102, and consult with counsel or your FOIA officer. Responding to a FOIA request will require you to, among other things:

- a. Respond within the FOIA time limits;
- b. Provide the requestor with an estimate of the fees involved;
- c. Determine which records are responsive;
- d. Determine which of the responsive records are releasable;
- e. Determine which exemptions are appropriate if any information is to be withheld;
- f. Prepare a Predisclosure Notification Letter;
- g. Create an index of withheld information (where applicable); and
- h. Provide appeal rights if information is withheld, if no information responsive to the request exists, and when fee waiver requests are denied.

2. What Documents Must I Disclose When Responding to a FOIA Request?

- a. You must disclose all documents and information not subject to a FOIA exemption (see SOP 40 03, Disclosure of Information). The two FOIA exemptions most commonly used by the size specialists are:
 - (1) Exemption 4 (5 U.S.C. CFR 552(b)(4)). This exemption allows you to withhold "trade secrets and commercial or financial information obtained from a person and privileged or confidential" information, that, if disclosed, could:
 - (a) Be competitively harmful to the submitter of the information;
 - (b) Impair the Government's ability to obtain similar necessary information in a purely voluntary manner in the future; and
 - (c) Affect other governmental interests, such as program effectiveness and compliance.

- (2) Exemption 6 (5 U.S.C. CFR 552(b)(6)). This exemption covers personnel, medical, and similar files that, if disclosed, would constitute "a clearly unwarranted invasion" of individual privacy and might adversely affect the individual or his/her family.
- b. A size determination to determine small business eligibility is subject to FOIA protection due to the use of proprietary information in a case.
- c. Each request must be carefully analyzed. FOIA Exemption #4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." This exemption is intended to protect the interest of both the government and submitter of information. With respect to a third party requestor, Table A (below) outlines which documents and information will generally be withheld or disclosed. You must provide Predisclosure Notification in accordance with Executive Order 12600 and [13 CFR § 102.7\(d\)](#), to submitters of confidential commercial information if you decide such information may be disclosed. Always consult with counsel prior to responding to a FOIA request.

3. How Do I Finalize a Response to a FOIA Request?

Prepare a cover letter and include copies of both the documents you are releasing (including copies of any redacted documents), and an index of records withheld in full or in part (redacted) and the reasons for withholding the records. Consult with counsel and review SOP 40 03, Disclosure of Information and 13 CFR part 102. The letter must contain the appeals paragraph from the SOP if information is withheld or if no records exist that are responsive to the request. The Area Director for Government Contracting, or designee, should sign the cover letter and a copy of the letter should be sent to the FOIA office.

Table A

Application for Small Business Size Determination (SBA Form 355)	Document:		Disclose or Withhold?	If Withheld, the applicable FOIA Exemption is:
	Information:			
	a.	Name and address of business	Disclose	--
	b.	Name of person to contact	Disclose	--
	c.	Sales, assets, net worth & number of employees	Withhold	Ex. 4
	d.	Primary business	Disclose	--
	e.	Average income	Withhold	Ex. 4
	f.	Why the business applied	Disclose	-

Document:		Disclose or Withhold?	If Withheld, the applicable FOIA Exemption is:
g.	Major products	Disclose	--
h.	Total sales of products	Withhold	Ex. 4
i.	Whether business operates under a license	Unless already public, withhold along with licensing agreement.	Ex. 4
j.	Principals of applicant business	Disclose names & titles; Withhold home addresses	-- Ex. 6 Ex. 4 and Ex. 6
k.	Information on affiliates	Disclose names & business addresses	--
Application for Small Business Size Determination (SBA Form 355) <i>continued</i>	l.	Principals of affiliates	-- Ex. 6 Ex. 4 and Ex. 6
		Products of affiliates	Withhold sales; Disclose products. --
	n.	Remaining financial information	Withhold Ex. 4
Articles of Incorporation		Withhold if not on file with the State; Disclose if on file with the State.	Ex. 4 --
By-laws		Disclose	--
Breakdown of number of employees		Withhold	Ex. 4
Tax returns		Withhold	Ex. 4 and Ex. 6
Financial statements		Withhold	Ex. 4
Breakdown of purchased parts and their respective value		Withhold	Ex. 4

Document:	Disclose or Withhold?	If Withheld, the applicable FOIA Exemption is:
Operations to be performed in-house	Withhold	Ex. 4
Method or equipment to be utilized	Withhold	Ex. 4
Value of labor contribution	Withhold	Ex. 4
Business' operations toward the manufacture of the end product	Withhold	Ex. 4
Information contained in a cover letter, or other unsolicited information.	Determine on a case-by-case basis. Consult counsel.	Determine on a case-by-case basis.

There are nine FOIA exemptions. For more information and the full list refer to SBA's Website, <http://www.sba.gov/about-sba-services/226/5099>.

Chapter 10

Establishment and Review of Size Standards by the SBA Office of Size Standards

1. How Do Size Standards Get Reviewed?

The SBA may establish or review a size standard for an industry or program as it considers appropriate. In addition, SBA will allow an interested person to petition the Administrator to establish, review, or amend a size standard for a NAICS code. In addition, Federal agencies are also allowed to petition the Administrator for a permanent or temporary exemption from a SBA size standard for their non-procurement programs.

2. To Whom Within SBA Are Requests for Changes to Size Standards Sent?

Interested parties may send requests for changes to a particular size standard, as well as concerns or suggestions for size standards, to the Chief for Office of Size Standards, U.S. Small Business Administration, 409 Third Street, S.W., Washington, D.C., 20416. The Office of Size Standards is usually the office within the SBA that reviews the request.

3. What Must Be Included in a Size Standards Petition for Rulemaking Request?

No specific format is required of a request to review a size standard. The following information should be included in a request for a petition for rulemaking:

1. The name, mailing address, and telephone number of the petitioner; if the petitioner is not an individual making the request, state the name, mailing address and telephone number of the individual designated as an agent of the petitioner for all purposes related to the petition.;
2. An explanation of petitioner's proposed action [*e.g.*, initiation of a rulemaking for a new regulation, amendment to an existing regulation, or removal of existing regulation] and its purpose;
3. The language petitioner proposes for a new or amended regulation, or the language petitioner would like to have removed from a current regulation;
4. An explanation of why petitioner's proposed action would be in the public interest;
5. Information and arguments that support petitioner's proposed action, including relevant technical and scientific data; and
6. Any specific facts or circumstances that support or demonstrate the need for the action the petitioner proposes.

The requestor should, however, explain why he or she believes the current size standard is inappropriate and how it is a problem for small business. In addition, the requestor should provide reasons why an alternative size standard would be a better definition of a small business.

4. What Will the Office of Size Standards Do with the Petition for the Rulemaking Request?

The Office of Size Standards will review the information contained in the request, as well as other information available to it, and decide whether or not to conduct an in-depth industry analysis to initiate rulemaking to change or modify the size standard. Unless it is determined otherwise no public hearing, argument or other proceeding will be held directly on the petition before its disposition.

If it is determined that the petition contains adequate justification, and the Regulatory Policy Officer agrees that a rulemaking should commence the Size Standards Division will initiate a rulemaking action. If it is determined that the petition does not justify a rulemaking action the petition will be denied.

Whenever the Size Standards Division makes a determination on a petition, the Office will prepare a response that will be issued to the petitioner in a timely manner. This response should be reviewed by the Office of General Counsel before being issued.

5. As an Economist or Program Analyst in the Size Standards Division, How Do I Review a Size Standards Request?

- a.) Size standards requests should be reviewed by evaluating the following information:
 - (1) Reasons why a change to the size standard is being requested and decide whether or not those reasons are credible and, if so, whether they would constitute a sufficient reason for establishing or changing the size standard.
 - (2) Key industry characteristics to determine if the industry structure supports the current size standard.
- b.) Based on these considerations, provide a recommendation to the Chief for Office of Size Standards.
- c.) If the Chief for the Office of Size Standards determines that the request warrants further analysis, then the economist or program analyst shall apply the procedures spelled out in the SBA “Size Standards Methodology.”

6. What Factors Do I Consider When Conducting an Industry Analysis?

- a. As an economist or program analyst in the Office of Size Standards, you should examine the following in accordance with the SBA’s “Size Standards Methodology” which is available on the size program website at www.sba.gov/size:

- (1) The structure of an industry and its various economic characteristics, including the degree of competition, average business size, start-up costs, barriers to entry, and the distribution of firms, and revenues and employees by firm size.
 - (2) SBA program objectives and the impact of different size standards on those programs, especially the impact on Federal small business contracting and SBA's loans
 - (3) Whether a size standard successfully excludes those businesses which are dominant in the industry.
- b. Other factors that are relevant to the industry.
- c. To establish or change a size standard, SBA will publish a notice of proposed rulemaking in the *Federal Register*. SBA then considers the public comments to the proposed rules in establishing the final size standard. Once the final size standard is determined, SBA will publish a final rule in the *Federal Register*.

7. How Do I Make a Recommendation?

As an economist or program analyst in the Office of Size Standards, you should prepare a detailed report making a recommendation to the Chief for the Office of Size Standards. Your report should consist of an assessment of the factors reviewed and the basis of your recommendation.

8. Who Approves the Recommendation?

Only the SBA's Administrator can approve changes to a size standard after internal review is completed. A recommendation for approval is forwarded to the Administrator in a Decision and Information Memorandum (SBA Form 606), usually after circulation to and clearance from all appropriate SBA's program offices.

9. When Does an Approval Take Effect?

A size standard can only be adopted after a final rule has been published in the *Federal Register*, and becomes effective on the date specified in the final rule (usually 30 days after publication).

10. How Do I Prepare a Notice of Proposed Rulemaking?

As an economist or program analyst in the Office of Size Standards, you must prepare a notice of proposed rulemaking (NPRM) following the instructions contained in the Office of *Federal Register* publication Document Drafting Handbook and SOP 00 03, "*Federal Register Documents*" and SOP 70 20, "Regulation Development and Program Review." The document must explain what the current regulation say and its relation with the law

(current statutes) and why it is being changed, either to further explain application of the law or how it is different. Additionally, the NPRM should explain why changes are necessary to bring it into compliance with the law, including the changed version of the regulations.

11. How Do I Evaluate Public Comments to a Proposed Rule?

- a. As an economist or program analyst in the Office of Size Standards, your evaluation of public comments should include three parts: (1) a statistical summary of the comments; (2) an evaluation of major issues; and, (3) the development of a recommendation and options. No specific format is required other than to prepare a clear and concise evaluation of the comments for senior management.
- b. The statistical summary of the comments should show the number of comments received, the number for and against the proposal, a general identification of commentators (*e.g.*, associations, Federal agencies, 8(a) firms, and if appropriate, and a summary of any other relevant information).
- c. The most important part is the evaluation of the major issues raised by the public comments. This evaluation, including responses to comments, will be included in a final rule. It must describe the major issues raised by the commentators, explain why they are an issue, and make an assessment of the issue. (Is it a valid issue? If not, why not?) In the final rule, SBA will state its position on an issue and provide a reasonable basis for that position. The evaluation of major issues should be concise, but it must provide enough information so anyone can understand the issue and the reasons for SBA's position.
- d. The final part consists of a recommendation of the office and presents options for internal review. These shall include a brief statement in support or against the recommendation or option.

12. How Do I Make a Recommendation for a Final Rule?

As an economist or program analyst in the Office of Size Standards, prepare a report that makes a recommendation to the Chief for the Office of Size Standards based on your evaluation of public comments and a reassessment of the factors previously reviewed.

13. How Do I Prepare a Final Rule?

As an economist or program analyst in the Office of Size Standards, you must prepare a final rule following the instructions contained in the Office of *Federal Register* publication Document Drafting Handbook and SOP 00 03 (*Federal Register* Documents) and SOP 70 20 (Regulation Development and Program Review.) The final rule will include a summary of the proposed rule, an evaluation of public comments, and the reasons for SBA's decision.

14. Who Approves the Final Rule?

Only the Administrator can approve a size standard. The approval process of a final rule is the same as that for a notice of proposed rulemaking.

15. What Information Should I Keep on a New or Revised Size Standard?

Information supporting the development of a size standard and all official correspondence become part of the administrative record. The administrative record should consist of a "documentation file" and an "administrative file."

- a. Documentation File: At a minimum, the documentation must be sufficient to support the basis of a size standard. Several specific types of information are noted below:
 - (1) All statistical data used in the rule to support the size standard and its impact;
 - (2) Letters requesting or commenting on the size standard (other than public comments on the proposed rules, which are to be filed as part of the administrative file);
 - (3) Copies of publications or reports referenced in the rule or significantly relied upon in analyzing the size standard;
 - (4) Memos on the size standard, if appropriate; and
 - (5) A copy of analysis of size standard issues, including the analysis of public comments on the proposed rules.

- b. Administrative File: This file contains formal documents concerning the size standard action. If it includes proprietary information to be protected from disclosure, place the information into a separate folder and reference it in the administrative file. Several specific types of information for inclusion into the administrative file are noted below:
 - (1) Copy of SBA Form 606 and all clearances;
 - (2) Correspondence memorandum with discussion of internal clearance comments and revisions to document;
 - (3) Dates that the rule was forwarded to OMB, cleared by OMB, and sent to the *Federal Register* for publication;
 - (4) Public comments on the proposed rule; and

- (5) Memos and other official correspondence on the size standard action.

16. What Process Does the SBA Follow to Consider Size Standards Requested by Another Federal Agency?

Requests from Federal agencies that require the approval of the Administrator of the SBA before using a size standard different from the SBA's size standard must be submitted to the Administrator following the procedure in 13 CFR 121.901-903. For most requests, the Office of Size Standards will review the request and make a recommendation to the Administrator.

17. How Do I Review a Size Standard Requested by Another Federal Agency?

- a. Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard is approved by SBA's Administrator. A Federal agency, before it proposes to adopt an alternative size standard for its program, must first consult with SBA's Office of Size Standards on what it is considering.

A request by a Federal agency to establish a size standard different from SBA's should be summarized in a brief (one to two pages) issue paper. If more information is necessary, attachments may be included with the issue paper. The issue paper should contain the following:

- (1) Concise statement of what is being proposed or recommended by the Federal agency;
 - (2) The applicable SBA's size standard;
 - (3) Issues concerning the proposed size standard. These issues may include topics such as the reason for a size standard different from SBA's size standard or the advantages and disadvantages of the proposed size standard;
 - (4) The impact on small businesses of the proposed size standard; and,
 - (5) A recommendation along with your reasons.
- b. Prepare a letter for the Chief, Office of Size Standards', signature.
 - c. A Federal agency, before it adopts an alternative size standard in a final rule for its program, must first get the SBA Administrator's approval. Prepare a letter for the Administrator's signature, following the above steps.

- d. See [13 CFR §§ 121.901 to 121.904](#) which details in full what a Federal agency must provide with its request and the steps that it must take before adopting an alternative size standard.

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Appendix 1

Index to Forms and Reports

<u>Form</u>	<u>Title</u>	<u>Paragraph</u>
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Report

Reserved

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Appendix 2

Sample Dismissal Letters (Paragraph 4-2)

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Appendix 2 (cont'd)

a. Protest Is Not Specific

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protested Business:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. This protest has been dismissed since the protest failed to set forth specific grounds for the allegation as required in 13 CFR 121.1007.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

In accordance with 13 CFR 134, an appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- the Area Office for Government Contracting which issued the size determination;
- the date the size determination was received;
- the solicitation or contract number;
- name, address and telephone number of the contracting officer;
- a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration
409 Third St. SW
Washington, DC 20416
PH: 1-888-734-3247
FX: 1-202-481-5719
EM: ombudsman@sba.gov

The right to file a complaint or comment with SBA's National Ombudsman is independent of any other rights you may have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement action or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (small business size regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)

b. Protest Is Premature

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protested Business:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. This protest has been dismissed since it is premature according to 13 CFR 121.1003-1006. This dismissal does not preclude you from submitting a timely protest in accordance with the regulations at 13 CFR 121.1001 through 121.1010.

In accordance with 13 CFR 134, an appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the Area Office for Government Contracting which issued the size determination;
the date the size determination was received;
the solicitation or contract number;
name, address and telephone number of the contracting officer;
a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration

409 Third St. SW
Washington, DC 20416
PH: 1-888-734-3247
FX: 1-202-481-5719
EM: ombudsman@sba.gov

The right to file a complaint or comment with SBA's National Ombudsman is independent of any other rights you may have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement action or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (small business size regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)

c. Protest Is Not Timely

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protested Business:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. This protest has been dismissed since the protest was not filed in a timely manner as required in the regulations at 13 CFR 121.1004.

In accordance with 13 CFR 134, an appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the Area Office for Government Contracting which issued the size determination;
the date the size determination was received;
the solicitation or contract number;
name, address and telephone number of the contracting officer;
a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration

409 Third St. SW
Washington, DC 20416
PH: 1-888-734-3247
FX: 1-202-481-5719
EM: ombudsman@sba.gov

The right to file a complaint or comment with SBA's National Ombudsman is independent of any other rights you may have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement action or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (small business size regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)

d. Protestor Is Not Entitled to Protest

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protested Business:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. According to the regulations at 13 CFR 121.1001, you are not entitled to initiate a size protest. Therefore, the protest has been dismissed.

In accordance with 13 CFR 134, an appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the Area Office for Government Contracting which issued the size determination;
the date the size determination was received;
the solicitation or contract number;
name, address and telephone number of the contracting officer;
a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration

409 Third St. SW
Washington, DC 20416
PH: 1-888-734-3247
FX: 1-202-481-5719
EM: ombudsman@sba.gov

The right to file a complaint or comment with SBA's National Ombudsman is independent of any other rights you may have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement action or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (small business size regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)

e. Protestor Is Not Entitled to Protest an 8(a) Business

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protested Business:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. Based on the regulations at 13 CFR 121.1001, the SBA has concluded that you are not entitled to initiate a size protest of participants in the 8(a) Business Development (8(a)/BD) Program. Therefore, your protest is dismissed.

In accordance with 13 CFR 134, an appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the Area Office for Government Contracting which issued the size determination;
the date the size determination was received;
the solicitation or contract number;
name, address and telephone number of the contracting officer;
a full and specific statement as to why the size determination is alleged to be in error, together with
argument supporting such allegations; and
the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration

409 Third St. SW
Washington, DC 20416
PH: 1-888-734-3247
FX: 1-202-481-5719
EM: ombudsman@sba.gov

The right to file a complaint or comment with SBA's National Ombudsman is independent of any other rights you may have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement action or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (small business size regulations)

cc: [the protested business]
Contracting Officer
ADD/MED

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Appendix 3

Sample Initial Letters (Paragraph 4-6)

<u>Initial Letters for:</u>	<u>Page</u>
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Appendix 3 (cont'd)

a. Number of Employees

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in your bid or offer on this procurement. The size standard applicable to this procurement is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business's and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed by your firm and any affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification;
- (6) Documentation to support the breakdown of persons employed by pay period (e.g., payroll records, tax filings, etc.); and
- (7) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>. SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

b. Annual Receipts

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business's self-certification in your bid or offer on this procurement. The size standard applicable to this procurement is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (4) a copy of your Articles of Incorporation and By-Laws;
- (5) your business's and affiliates' last annual statements to shareholders; and
- (6) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates.
- (8) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 IRS Form 4506

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

c. Non-Manufacturer (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business's self-certification in your bid or offer on this procurement. The size standard applicable to this procurement is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, , I have enclosed SBA Form 355 (Information for Small Business Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business's and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed by your firm and any affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification;
- (6) Documentation to support the breakdown of persons employed by pay period (e.g., payroll records, tax filings, etc.); and
- (7) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

If your business is supplying a product of another manufacturer, SBA Form 355 must be completed by that business as well. (See 13 CFR 121.406.)

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

d. Manufacturer (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business's self-certification in your bid or offer on this procurement. The size standard applicable to this procurement is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business's and affiliates' last annual statements to shareholders;
- (5) a breakdown of the number of persons employed by your firm and any affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification; and
- (6) a complete breakdown of your purchased parts or components and their respective value; the operations to be performed in-house with your own personnel; the methods or equipment to be utilized; and the value of labor contribution. Describe in detail your operations toward the manufacture of the end product;
- (7) Documentation to support the breakdown of persons employed by pay period (e.g., payroll records, tax filings, etc.); and

(8) Please see

- SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
- A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
SBA Form 355

cc: [the protestor]
Contracting Officer

Appendix 3 (cont'd)

e. 8(a) Eligibility (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: 8(a) Program Eligibility
NAICS Code:
Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Office of 8(a) Business Development (8(a)/BD)) in connection with your application for participation in the 8(a)/BD Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business. The regulations at 13 CFR 121.404 state that an 8(a)/BD applicant "must qualify as a small business for its primary industry classification as of the date of its application and the date of certification by SBA." The size standard corresponding to the NAICS code for your primary industry is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, , I have enclosed SBA Form 355 (Information for Small Business Size Determination).

The following information is required:

- (1) a completed SBA Form 355;
- (2) a breakdown of the number of persons employed by your firm and any affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification;
- (3) Documentation to support the breakdown of persons employed by pay period (e.g., payroll records, tax filings, etc.); and
- (4) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
SBA Form 355

cc: 8(a)/BD Office

Appendix 3 (cont'd)

f. 8(a) Eligibility (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose: 8(a) Program Eligibility
 NAICS Code:
 Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Office of 8(a) Business Development (8(a)/BD)) in connection with your application for participation in the 8(a)/BD Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business. The regulations at 13 CFR 121.404 that state an 8(a)/BD applicant "must qualify as a small business for its primary industry classification as of the date of its application and the date of certification by SBA." The size standard corresponding to the NAICS code for your primary industry is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) a completed SBA Form 355;
- (2) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (3) complete financial statements and Federal income tax returns for the last three completed fiscal years for your business and any affiliates; and
- (4) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
SBA Form 355
IRS Form 4506

cc: 8(a)/BD Office

Appendix 3 (cont'd)

g. 8(a) Continued Participation (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: Continued 8(a) Participation
Solicitation:
NAICS Code:
Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Office of 8(a) Business Development (8(a)/BD) in connection with your continued participation in the 8(a)/BD Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the present date. The size standard corresponding to the NAICS code for your primary industry is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination).

The following information is required:

- (1) a completed SBA Form 355;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business's and affiliates' last annual statements to shareholders; and
- (4) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification;
- (5) Documentation to support the breakdown of persons employed by pay period (e.g., payroll records, tax filings, etc.); and
- (6) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355

cc: 8(a)/BD Office

Appendix 3 (cont'd)

h. 8(a) Continued Participation (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: Continued 8(a) Participation
Solicitation:
NAICS Code:
Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Office of 8(a) Business Development (8(a)/BD) in connection with your continued participation in the 8(a)/BD Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the present date. The size standard corresponding to the NAICS code for your primary industry is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) a completed SBA Form 355;
- (2) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business's and affiliates' last annual statements to shareholders;
- (5) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates; and
- (6) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](http://www.ecfr.gov/g13/cfr121.103)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 IRS Form 4506

cc: 8(a)/BD Office

Appendix 3 (cont'd)

i. Financial Assistance (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: SBA Financial Assistance
NAICS Code:
Size Standard:

Dear:

Your firm's status as a small business has been questioned by the Assistant District Director for Financial Assistance. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the date of your application for financial assistance. Your firm's size will be determined based on the size standard corresponding to the NAICS code for your primary industry; and the size standard corresponding to the NAICS code for the primary industry of your firm and your affiliates or your primary industry, whichever is higher. These size standards are base based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination).

The following information is required:

- (1) a completed SBA Form 355;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business's and affiliates' last annual statements to shareholders;
- (4) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification;
- (5) Documentation to support the breakdown of persons employed by pay period (e.g., payroll records, tax filings, etc.); and
- (6) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](http://www.ecfr.gov/g13/cfr121.103)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
SBA Form 355

cc: Financial Assistance Office

Appendix 3 (cont'd)

j. Financial Assistance (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: SBA Financial Assistance
NAICS Code:
Size Standard:

Dear:

Your firm's status as a small business has been questioned by the Assistant District Director for Financial Assistance. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the date of your application for financial assistance.

Your firm's size will be determined based on (1) the size standard corresponding to the NAICS code for your primary industry; and, (2) the size standard corresponding to the NAICS code for the primary industry of your firm and your affiliates for the corresponding industry, whichever is higher. The size standards are based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax form).

The following information is required:

- (1) a completed SBA Form 355;
- (2) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business's' and affiliates' last annual statements to shareholders;
- (5) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification for your business and any affiliates; and
- (6) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](http://www.sba.gov/size)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 IRS Form 4506

cc: Financial Assistance Office

Appendix 3 (cont'd)

k. Joint Venture/Ostensible Subcontractor (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

Your firm's status as a small business has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your self-certification in your bid or offer on this procurement.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business's and affiliates' last annual statements to shareholders;
- (5) a breakdown of the number of persons employed by your firm and its affiliates on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification;
- (6) Documentation to support the breakdown of persons employed by pay period (e.g., payroll records, tax filings, etc.);
- (7) a copies of your full proposal (technical, cost, past performance, etc.), including best and final offer;
- (8) any agreements with subcontractors; and

(9) Please see

- SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
- A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
SBA Form 355

cc: [the protestor]
Contracting Officer

Appendix 3 (cont'd)

I. Joint Venture/Ostensible Subcontractor (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

Your firm's status as a small business has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your self-certification in your bid or offer on this procurement. The size standard applicable to this procurement is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination) and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (4) a copy of your Articles of Incorporation and By-Laws;
- (5) your business's and affiliates' last annual statements to shareholders;
- (6) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates;
- (7) a copy of your full proposals (technical, cost, past performance, etc);
- (8) copies of agreements with subcontractors; and

(10) Please see

- SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
- A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 IRS Form 4506

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

m. Franchise Agreement (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

Your small business status with respect to your franchise agreement has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in your bid or offer on this procurement. The size standard applicable to this procurement is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business's and affiliates' last annual statements to shareholders;
- (5) a breakdown of the number of persons employed by your firm and its affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification;
- (6) Documentation to support the breakdown of persons employed by pay period (e.g., payroll records, tax filings, etc.);
- (7) a copy of your franchise agreement; and

(8) Please see

- SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
- A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
SBA Form 355

cc: [the protestor]
Contracting Officer

Appendix 3 (cont'd)

n. Franchise Agreement (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

Your small business status with respect to your franchise agreement has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in your bid or offer on this procurement. The size standard applicable to this procurement is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed SBA Form 355 (Information for Small Business Size Determination) and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (4) a copy of your Articles of Incorporation and By-Laws;
- (5) your business's and affiliates' last annual statements to shareholders;
- (6) a copy of your franchise agreement;
- (7) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates;
and

(8) Please see

- SBA's Small Business Size Regulations ([13 CFR 21.103](#)), and
- A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 IRS Form 4506

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

o. Certificate of Competency (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by: COC Program
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

Your small business status has been questioned in connection with your application for a Certificate of Competency (COC) for the above-referenced procurement.

The concern is that your business

Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business in order to proceed with the COC process. The size standard applicable to this procurement is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. The following information is required:

- (1) your response to the concern(s) mentioned above;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business's and affiliates' last annual statements to shareholders;
- (4) a breakdown of the number of persons employed by your firm and its affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification;
- (5) Documentation to support the breakdown of persons employed by pay period (e.g., payroll records, tax filings, etc.); and
- (6) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small and, therefore, find your business ineligible for a COC.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting
or Size Determination Specialist

cc: COC Program

Appendix 3 (cont'd)

p. Certificate of Competency (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by: COC Program
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

Your small business status has been questioned in connection with your application for a Certificate of Competency (COC) for the above-referenced procurement.

The concern is that your business

Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business in order to proceed with the COC process. This size standard applicable to this procurement is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the concern(s) mentioned above;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business's and affiliates' last annual statements to shareholders;
- (4) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates;
- (5) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form; and
- (6) Please see
 - SBA's Small Business Size Regulations ([13 CFR 121.103](#)), and
 - A discussion of and examples of affiliation at www.sba.gov/size.

Size regulations in the Code of Federal Regulations (CFR) can be found at <http://ecfr.gpoaccess.gov/>.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small and, therefore, find your business ineligible for a COC.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: IRS Form 4506

cc: COC Program

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Appendix 4

Sample SBA Form 355, "Information for Small Business Size Determination" (Paragraphs 4-7, 7-3, and 9-3)

The current SBA Form 355, "Information for Small Business Size Determination" will expire on November 30, 2012.

Please use the current form on SBA's website at <http://www.sba.gov/content/sba-form-355-information-small-business-size-determination> .

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Appendix 5
Sample Size Determination Format
(Paragraph 5-7)

Size Determination
 File Number Area-FYXX-case number

Date:
 Size Determination of:
 Address of Business:
 City, State, Zip:

Solicitation No:
 Procuring Activity:

NAICS Code:
 Size Standard:

INTRODUCTION: On [date], the U.S. Small Business Administration (SBA), Office of Government Contracting, received a timely and specific protest against [business], forwarded by the Contracting Officer, [agency, location]. The protest, filed by [protestor], alleged that [business] failed to meet the applicable small business criteria for the following reasons:

The subject solicitation is for [brief description of product or service]. This solicitation is a 100% small business set-aside classified under the NAICS Code and Size Standard listed above.

The size of the subject business will be determined in accordance with 13 CFR Part 121.

EVIDENCE:

CONCLUSION: Based on the evidence above, [business] is found to be a small business for the referenced size standard and for this solicitation.

OR

Based on the evidence above, [business] is found to be other than a small business for this solicitation and for the referenced size standard.

Name
 Area Director
 for Government Contracting

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Appendix 6

Sample Notification Letters (Paragraph 6-1)

<u>Notification Letters for:</u>	<u>Page</u>
<i>a. Small Business</i>	<i>112</i>
<i>b. Other Than Small.....</i>	<i>114</i>
<i>c. Other than Small for this Procurement</i>	<i>116</i>
<i>d. Recertification Granted (Small)</i>	<i>118</i>
<i>e. Recertification Denied (Other than Small).....</i>	<i>119</i>
<i>f. Failure to Respond (Other than Small)</i>	<i>121</i>
<i>g. Small for 8(a)/BD or Financial Assistance</i>	<i>123</i>
<i>h. Other than Small for 8(a)/BD or Financial Assistance.....</i>	<i>125</i>

Appendix 6 (cont'd)

a. Small Business

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is a small business under the size standard listed above. A copy of the formal size determination is enclosed.

If your business is adversely affected by this decision you may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the Area Office for Government Contracting which issued the size determination;
the date of receipt of the size determination;
the solicitation or contract number;
name, address and telephone number of the contracting officer;
a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
the name, address, telephone number and signature of the appellant or its attorney.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: A copy of size determination

cc: [the protestor]
Contracting Officer

Appendix 6 (cont'd)

b. Other Than Small

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small under the size standard listed above. A copy of the formal size determination is enclosed.

The finding is final, unless reversed by the Office of Hearings and Appeals (OHA) of the SBA or by a Court of competent jurisdiction. Your firm may not self-certify as a small business at or below the size standard above, unless and until this decision is reversed or your firm is recertified. Failure to comply will subject you and your firm to criminal and civil penalties as well as possible debarment.

Any false information upon which the Federal government relies and for which your company may receive a benefit as a small business is punishable by Federal law. Both the business and its principals (13 CFR 121.1009) are subject to this punishment.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the Area Office for Government Contracting which issued the size determination;
 the date of receipt of the size determination;
 the solicitation or contract number;
 name, address and telephone number of the contracting officer;
 a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
 the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
 U.S. Small Business Administration
 409 Third Street SW
 Washington, DC 20416
 Phone: 1-888-734-3247
 Fax: 1-202-481-5719
 Email: ombudsman@sba.gov

The right to file a complaint or comment with the SBA National Ombudsman is independent of any other rights you have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
 Area Director
 for Government Contracting

Enclosures: A copy of size determination

cc: [the protestor]
 Contracting Officer

Appendix 6 (cont'd)

c. Other than Small for this Procurement

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small for this procurement. A copy of the formal size determination is enclosed.

The finding is final, unless reversed by the Office of Hearings and Appeals of the SBA or by a Court of competent jurisdiction. Your firm may not self-certify as a small business at or below the size standard above, unless and until this decision is reversed or your firm is recertified. Failure to comply will subject you and your firm to criminal and civil penalties as well as possible debarment.

If your business is adversely affected by this decision you may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the Area Office for Government Contracting which issued the size determination;
 the date of receipt of the size determination;
 the solicitation or contract number;
 name, address and telephone number of the contracting officer;
 a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
 the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
 U.S. Small Business Administration
 409 Third Street SW
 Washington, DC 20416
 Phone: 1-888-734-3247
 Fax: 1-202-481-5719
 Email: ombudsman@sba.gov

The right to file a complaint or comment with the SBA National Ombudsman is independent of any other rights you have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
 Area Director
 for Government Contracting

Enclosures: A copy of size determination

cc: [the protestor]
 Contracting Officer

Appendix 6 (cont'd)

d. Recertification Granted (Small)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Purpose: Recertification Request
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration has made a formal size determination that your business is small under the size standard listed above. Therefore, your business is recertified as small under the above size standard. A copy of the formal size determination is enclosed.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosure: A copy of size determination

Appendix 6 (cont'd)

e. Recertification Denied (Other than Small)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Purpose: Recertification Request
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small under the size standard listed above and has denied your application for recertification as a small business. A copy of the formal size determination is enclosed.

Section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the Area Office for Government Contracting which issued the size determination;
the date of receipt of the size determination;
a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration
409 Third Street SW
Washington, DC 20416
Phone: 1-888-734-3247
Fax: 1-202-481-5719
Email: ombudsman@sba.gov

The right to file a complaint or comment with the SBA National Ombudsman is independent of any other rights you have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: A copy of size determination

Appendix 6 (cont'd)

f. Failure to Respond (Other than Small)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small since your business failed to respond to our request for information. A copy of the formal size determination is enclosed.

The finding is final, unless reversed by the Office of Hearings and Appeals of the SBA or by a Court of competent jurisdiction. You are reminded any information about your business that is false upon which the Federal Government relies on to which a benefit is received is punishable by Federal Law to both the business and its principals (13 CFR 121.1009 (g)(5)). Additionally, SBA may decide to debar your firm from contracting with the Federal government in the future (13 CFR 125.29 (a)(7)(b)). Compliance is mandatory, as well as a responsibility of all businesses that participate in Federal Government contracting.

If your business is adversely affected by this decision you may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the Area Office for Government Contracting which issued the size determination;
 the date of receipt of the size determination;
 a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
 the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
 U.S. Small Business Administration
 409 Third Street SW
 Washington, DC 20416
 Phone: 1-888-734-3247
 Fax: 1-202-481-5719
 Email: ombudsman@sba.gov

The right to file a complaint or comment with the SBA National Ombudsman is independent of any other rights you have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
 Area Director
 for Government Contracting

Enclosures: A copy of size determination

cc: [the protestor]
 Contracting Officer

Appendix 6 (cont'd)

g. Small for 8(a)/BD or Financial Assistance

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: 8(a)/BD Eligibility or Financial Assistance
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is small under the size standard listed above. A copy of the formal size determination is enclosed.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the area office which issued the size determination;
the date of receipt of the size determination;
a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration
409 Third St. SW
Washington, DC 20416

PH: 1-888-734-3247
FX: 1-202-481-5719
EM: ombudsman@sba.gov

The right to file a complaint or comment with SBA's National Ombudsman is independent of any other rights you may have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement action or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: A copy of size determination

cc: 8(a)/BD Office or Office of Financial Assistance

Appendix 6 (cont'd)

h. Other than Small for 8(a)/BD or Financial Assistance

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small under the size standard listed above. A copy of the formal size determination is enclosed.

Section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

For more information on the appeal petition, see [13 CFR § 134.305](#). OHA regulations (13 CFR 134) can be found at <http://ecfr.gpoaccess.gov/>.

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

the Area Office for Government Contracting which issued the size determination;
the date of receipt of the size determination;
a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
the name, address, telephone number and signature of the appellant or its attorney.

If you believe your small business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman
U.S. Small Business Administration
409 Third Street SW
Washington, DC 20416
Phone: 1-888-734-3247
Fax: 1-202-481-5719
Email: ombudsman@sba.gov

The right to file a complaint or comment with the SBA National Ombudsman is independent of any other rights you have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement or impede any administrative or criminal process.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: A copy of size determination

cc: 8(a)/BD Office or Office of Financial Assistance

Appendix 7

Affiliation

Why is Affiliation an Important Issue?

SBA determines whether an entity qualifies as a small business concern by counting its receipts, employees, or other measures including those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit. 13 C.F.R. § 121.103(a)(6).

Where Do I Find SBA's Affiliation Rules?

SBA's rules on affiliation are found at 13 C.F.R. § 121.103. The regulations are available online at www.sba.gov/size. You may also contact any of the points of contact at the bottom of this document to receive a copy of the rules.

For Which Government Programs Does Affiliation Apply?

SBA's affiliation rules apply to the following government contracting or business development programs:

- small business set asides;
- Small Business Innovation Research (SBIR) program;
- Small Business Technology Transfer (STTR) program;
- Certificate of Competency (COC) program;
- Historically Underutilized Business Zone (HUBZone) program;
- Women-Owned Small Business (WOSB) and Economically Disadvantaged Women-Owned Small Business (EDWOSB) programs;
- Service-Disabled Veteran-Owned Small Business program;
- small disadvantaged business price evaluation adjustment and participation program;
- small business subcontracting;
- 8(a) Business Development program; and
- 7(j) management and technical assistance program.

SBA considers the receipts or employees (or other measure) of an applicant's or participant's affiliates in determining size for purposes of participating in the above programs, or receiving an award or preference as a result of status as a small business.

The affiliation principles also apply to small business loan programs. A number of government agencies, including the Food and Drug Administration and the Department of Veterans Affairs, operate programs for which small business status is a requirement for eligibility. The affiliation principles apply to these programs as well.

What are the General Principles of Affiliation?

Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties.

Control may be affirmative or negative. Negative control includes instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

SBA commonly receives questions about whether a business concern is affiliated with its investors. The following are some of the affiliation rules that may apply when a business concern receives an investment, such as from a venture capital company, hedge fund, or private equity firm.

1. Stock ownership (13 C.F.R. § 121.103(c))

Control of 50% or more of voting stock. A person¹ is an affiliate of a concern if the person owns or controls, or has the power to control, 50% or more of the concern's voting stock.

Example: Company A is the majority owner of Companies B, C and D (54.5%, 81%, and 60% respectively). Company A has the power to control Companies B, C and D. The companies are all affiliated. The receipts and/or number of employees of all four companies will be aggregated in determining the size of any one of them.

Control of less than 50% voting stock, but large compared to others. A business concern also is affiliated with a person who owns and controls, or has the power to control, a block of voting stock that is large compared to all other outstanding blocks of stock.

Example 1: Company A owns 40 percent of the voting stock of Company B and the next largest share is 2 percent. Company A controls Company B due to the fact it owns the largest block of voting stock compared to all other outstanding blocks of voting stock. Company A and Company B are affiliates. In addition, all other companies controlled by Company A will be considered affiliates of Company B.

Example 2: Two individuals each own blocks of shares of Company A. One individual owns 46.67% of the business and the other owns 33.333%. The individual that owns 46.67% of the stock owns the largest single block, which is large compared to any other block, and therefore has the power to control the concern. This individual also controls Company B. There is affiliation between Company A and Company B.

Control of less than 50% voting stock by multiple minority owners. If two or more persons each owns or controls (or has the power to control) less than 50% of a concern's voting stock and (i) the minority holdings are all approximately equal in size and (ii) all of the minority holdings taken together are large compared to any other stock holdings, affiliation is presumed to exist with each of those persons. A presumed affiliate may rebut the presumption by showing that it does not have control or the power to control.

Example: Investor X, Investor Y, and Company A each own 23% of Company B. No other stockholder owns more than 5% of Company B. All three persons will be presumed to control Company B. Each presumed affiliate may attempt to rebut the presumption by showing that its control or power to control does not exist. If the presumption is not overcome, then Company A and Investors X and Y will all be considered affiliates of Company B. In addition, all companies controlled by Company A and Investors X and Y are affiliates of Company B.

Voting stock is widely held. When a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the business concern's Board of Directors and Chief Executive Officer (CEO) or President are deemed to have the power to control the concern unless evidence is provided to show otherwise.

Example: In a widely held corporation where no one stockholder has a block of voting stock sufficient to give it control or the power to control the concern, control instead rests in the Board of Directors and the CEO or President. This means that any business controlled by the Board or by the CEO or President is an affiliate of the business concern in question, unless the Board and CEO or President can rebut this presumption.

2. Stock options, convertible securities, and agreements to merge (13 C.F.R. § 121.103(d))

SBA treats stock options, convertible securities, and agreements to merge as though the rights granted have been actually exercised. SBA gives present effect to an agreement to merge (including an agreement in

¹ The term "person" used throughout this document and the regulations includes an individual, entity, or business concern. § 121.103(c)(1).

principle) or to sell stock. If these rights have been granted and they confer the power to control, affiliation exists.

Example 1: If Company A holds an option to purchase a controlling interest in Company B, the situation is treated as though Company A had exercised its rights and had become owner of the controlling interests in Company B. Company A and B are affiliates. In addition, all companies controlled by Company A will be considered affiliates of Company B.

Example 2: Company A and Company B are in discussion about a merger between the two of them. Both companies' representatives have met several times over the past two months. There is neither a formal nor informal agreement to merge. Unless the two companies have an agreement in principle, SBA will not find affiliation between the two companies based on these open and continuing discussions of merger alone.

3. Common management (13 C.F.R. § 121.103(e))

If one or more officers, directors, managing members, or general partners who control a business concern control the Board of Directors and/or the management of another business concern, the concerns are affiliates.

Example 1: Controlling members of Company A's Board of Directors occupy three out of five positions in Company B's Board of Directors. The two concerns are affiliated. In addition, all concerns controlled by Company A will be considered affiliates of Company B.

Example 2: A controlling member of Company A's Board of Directors has veto rights over the majority decisions of Company B's Board of Directors. By possessing such negative control, Company A has control of the Board of Directors of Company B and the two concerns are affiliated. In addition, all companies controlled by Company A will be considered affiliates of Company B.

4. Identity of interest between individuals or businesses, including family members (13 C.F.R. § 121.103(f))

Individuals or firms that have identical (or substantially identical) business or economic interests may be treated as one party unless they can demonstrate otherwise. Family members, persons with common investments, or firms that are economically dependent through contractual (or other) relationships, are among those treated this way. However, individuals or firms may seek to demonstrate that no affiliation exists by providing evidence establishing that apparently identical interests are, in fact, separate. Patterns of subcontracting, commingling of staff and/or facilities, and other veiled attempts to disguise the true nature of the relationship may evidence an identity of interest.

Example 1: Several officers of Company A are also officers of Company B. The two companies are in the same line of work and extensively subcontract with each other. The interrelationship between the two companies results in them acting as one, and therefore, the two are considered affiliates.

Example 2: Company A and B share office space and equipment in the same location and also share key employees. In addition, Company A has sent a substantial amount of business to Company B for each of the last three years. All this, taken together, is an indication that the two companies have combined their resources to each other's benefit, and therefore, are likely to be affiliated.

Example 3: When three of four members of a concern's Board of Directors have multiple investments in common with each other outside the concern, they may be viewed as sharing an identity of interest. The three directors would be deemed to control the Board and to therefore also control the business. Each outside business that these three directors control would be an affiliate of the business concern in question.

Example 4: A husband and wife founded an accounting firm in 1974. In 2008, their daughter opened an office supply store using her own funds and a bank loan. Her parents purchase supplies from the daughter's store, and sales to her parents represent 10% of the daughter's revenues. There are no other business interactions between the daughter and her parents. If there are no other indicia of affiliation, SBA

would find the business dealings to be minimal and the presumed affiliation due to family relationships is rebuttable.

5. Contractual relationships or economic dependency (13 C.F.R § 121.103(a),(f) and (g))

A concern that is economically dependent upon another person will probably be found to be affiliated with the concern(s) on which it is dependent.

Example 1: Company A performs subcontracts for Company B, and Company B accounts for 90% of Company A's revenues. Company A's existence depends on work from Company B, and the two are deemed affiliates.

Example 2: Company A provides significant loans to Company B and guarantees other loans to Company B. Company B's over reliance of dependence on Company A's financial support (both direct and indirect) results in their affiliation.

Example 3: A loan between two businesses is not an arm's-length transaction and the terms and conditions of the loan demonstrate financial dependence by one business on the other. The two are deemed affiliates.

Example 4: Company A obtained a patent for a product it developed. It licenses the use of the product to Company B, and makes it available for other companies to obtain a license. No affiliation exists between Company A and Company B based solely on the licensing agreement.

6. Newly Organized Concerns (13 C.F.R § 121.103(g))

A new concern that is organized by the former officers, directors, principal stockholders, managing members, or key employees of another concern may be affiliated with the older concern if the older concern furnishes the new concern with contracts, financial or technical assistance, indemnification, or other facilities. The affiliation may be rebutted by showing that there is a clear line of fracture between the two businesses.

Example: The former chief executive officer of Company A organizes Company B. Company B receives subcontracts from Company A. Company B is affiliated with Company A, unless it can establish that there is a clear line of fracture between the two companies.

CONCLUSION

The above is an overview of some basic principles of affiliation as set forth in SBA's regulations. A summary discussion of SBA's affiliation rule is also contained on its web site at www.sba.gov/size. For information on the Office of Hearings and Appeals rulings involving affiliation, go to the OHA website at http://www.sba.gov/aboutsba/sbaprograms/oha/OHADecisions/OHA_DECISIONS.html