

§ 121.801

if the agency makes the award on or after the date that is 9 months from the end of the period for submitting applications under the SBIR solicitation.

(2) This small business, known as a covered small business concern, would have to certify that it meets the requirements of the SBIR program set forth in §§121.702(a)(1)(ii) or 121.702(a)(1)(iii), and 121.702(a)(2) and 121.702(c) at the time of award of the funding agreement.

(d) A funding agreement officer may accept a concern's self-certification as true for the particular funding agreement involved in the absence of a written protest or other credible information which would cause the funding agreement officer or SBA to question the size or eligibility of the concern.

(e) Procedures for protesting an awardee's self-certification are set forth in §§121.1001 through 121.1009. In adjudicating a protest, SBA may address both the size status and eligibility of the SBIR or STTR awardee.

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SIZE ELIGIBILITY REQUIREMENTS FOR PAYING REDUCED PATENT FEES

§ 121.801 May patent fees be reduced if a concern is small?

These sections apply to size status for the purpose of paying reduced patent fees authorized by Pub. L. 97-247, 96 Stat. 317. The eligibility requirements for independent inventors and non-profit organizations for the purpose of paying reduced patent fees are set forth in regulations of the Patent and Trademark Office of the Department of Commerce, 37 CFR 1.9, 1.27, 1.28.

§ 121.802 What size standards are applicable to reduced patent fees programs?

A concern eligible for reduced patent fees is one:

(a) Whose number of employees, including affiliates, does not exceed 500 persons; and

(b) Which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit

13 CFR Ch. I (1-1-14 Edition)

organization or a small business concern under this section.

§ 121.803 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions, based upon a specific patent application pursuant to the rules of the Patent and Trademark Office, Department of Commerce, and are binding upon the parties. Other SBA opinions provided to patent applicants or others are only advisory, and are not binding or appealable.

§ 121.804 When does SBA determine the size status of a business concern?

Size status is determined as of the date of the patent applicant's written verification of size.

§ 121.805 May a business concern self-certify its size status?

(a) A concern verifies its size status with its submission of its patent application.

(b) Any attempt to establish small size status improperly (fraudulently, through gross negligence, or otherwise) may result in remedial action by the Patent and Trademark Office.

(c) In the absence of credible information indicating otherwise, the Patent and Trademark Office may accept the verification by the concern as a small business as true.

(d) Questions concerning the size verification are resolved initially by the Patent and Trademark Office. If not verified as small, the applicant may request a formal SBA size determination.

SIZE ELIGIBILITY REQUIREMENTS FOR COMPLIANCE WITH PROGRAMS OF OTHER AGENCIES

§ 121.901 Can other Government agencies obtain SBA size determinations?

Upon request by another Government agency, SBA will provide a size determination, under SBA rules, standards and procedures, for its use in determining compliance with small business requirements of its statutes, regulations or programs.