

WAC 326-20-099 Small business concern requirement and size standards. (1) In addition to meeting the ownership and control requirements of chapter 39.19 RCW, a business must qualify as a small business concern for certification eligibility or recertification.

(a) A small business concern is a business that is independently owned and operated, is not dominant in its field of operations, and does not exceed the size limitations as set forth in the current table of North American Industrial Classification System (NAICS) codes or corresponding industry size standards as set forth in 49 C.F.R. Part 26 and amendments or inflationary adjustments thereof.

(b) The number of employees or amount of annual receipts listed as the size standard for each NAICS code indicates the maximum allowed for a business, including its affiliates, to qualify as a small business concern.

(c) The office's determination of whether a business qualifies as a small business concern must be, whenever possible, based on criteria consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. 632, and its implementing regulations, taking into consideration statewide markets.

(2) A business exceeding the small business size limits after certification by the office must be subject to graduation.

(3) At the time of application for certification and recertification, a business must demonstrate to the office that it is a small business concern. The office may verify the business is still a small business concern at any time after certification. In verifying the business's size, the office will review such financial documentation made available to the office, such as annual financial statements, federal income tax returns, state and local excise tax reports, and other relevant information.

(4) Except as otherwise provided in this chapter, affiliation occurs when either directly or indirectly:

(a) One business controls or has power to control the other;

(b) A third party or parties controls or has power to control both; or

(c) An "identity of interest" exists among them so the presumption of affiliation exists.

(5) When reference sets the maximum size standard to "annual receipts," a business exceeding the monetary figure in the standard is not eligible for certification. Annual receipts includes all revenue received or accrued from sources, such as sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. The term "receipts" excludes proceeds from any of the following:

(a) Sales of capital assets and investments;

(b) Proceeds from transactions between a concern and its domestic and foreign affiliates;

(c) Proceeds from payments of notes receivable, accounts receivable, and amounts collected as an agent for another, such as gross bookings when a commission is earned, in which case only the commission earned constitutes revenue, and taxes collected for remittance to a taxing authority.

(6) The measurement period must comply with the following:

(a) The size of a business with three or more completed fiscal years will be determined by averaging the annual receipts of the business for the most recent three years;

(b) The size of a business with less than three fiscal years will be determined by computing the average of the annual receipts from the

time the business formed, calculating total revenues compiled over the period divided by the number of weeks, including fractions of a week, multiplied by fifty-two;

(c) Method of determining annual receipts. Revenue may be taken from the regular books of account of the concern. If the office so elects or the business has not kept regular books of account or the Internal Revenue Service has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the federal income tax return of the concern may be used in determining annual receipts along with other information the office deems relevant.

(7) Where the size standard is "number of employees," size eligibility requires the concern may not exceed the number of employees in that standard.

(a) "Number of employees" means that average employment of the concern, including domestic and foreign affiliate employees, based upon employment during each of the pay periods for the preceding completed twelve calendar months.

(b) In computing average employment, part-time and temporary employees count as full-time employees for each applicable pay period.

(c) If a concern has not been in business for twelve months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.

(8) No business, regardless of its primary NAICS code, is eligible for certification if it exceeds the largest annual revenue limit contained in 49 C.F.R. Part 26 and any amendments or inflationary adjustments thereof.

(9) In determining the business's primary industry, including its affiliates, the office must consider the distribution of receipts, employees, and costs in the differing industry areas the business operated during its most recently completed fiscal year. Other factors, such as patents, contract awards, and assets, may be considered.

(10) If the activities of the business encompass two or more NAICS codes, the first NAICS code listed in the directory is the primary industry classification of the business.

(11) A business exceeding the small business size limits after certification by the office must be subject to graduation.

(12) For purposes of utilization on projects funded by any operating modal of the U.S. Department of Transportation the maximum dollar size standard in 49 C.F.R. Part 26 as may be amended or adjusted for inflation, must apply, even if the size standard would otherwise be set by reference to number of employees. This standard is a maximum. Certified businesses are still subject to applicable lower limits on business size as established by the United States Small Business Administration and these regulations.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-099, filed 6/7/19, effective 7/8/19.]