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SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules Section of this **Federal Register**.

Dated: November 26, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02-31236 Filed 12-11-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. OST-2002-13977; Notice No. 1]

RIN 2105-AD21

Participation by Disadvantaged Business Enterprises in Airport Concessions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Currently, the size standard for most types of businesses seeking to participate as disadvantaged business enterprises (DBEs) in airport concessions is \$30 million in annual gross receipts. This NPRM seeks comment on a suggestion that the Department has received to adjust this size standard to take into account the varying amounts of concession fees that different types of businesses typically pay to airports.

DATES: Comments should be received by January 27, 2003. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Attn: Docket No. OST-2002-13977, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC, 20590. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will

date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9 a.m. through 5:30 p.m. Monday through Friday. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: <http://dms.dot.gov/submit/>. The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: <http://dms.dot.gov/search/>.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366-9310 (voice), (202) 366-9313 (fax), (202) 755-7687 (TDD), bob.ashby@ost.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION: The small business size standard for businesses seeking to participate as DBE airport concessionaires is generally \$30 million in annual gross receipts, averaged over three years (\$40 million for car rental companies).¹ The Department has received correspondence from an airport advertising firm and its legal representative requesting a change in this size standard. The Department is treating this correspondence as a petition for rulemaking under 49 CFR § 5.11. We are granting the petition by presenting for public comment a proposal based on the petitioners' submissions.

The case petitioners make for adjusting the size standard is essentially that different types of concession businesses typically pay widely different concession fees to airports. For example, according to data selected from a 2000-2001 survey by the American Association of Airport Executives (AAAE) of charges made by large U.S. airports, food and beverage concessionaires paid an average of 15.2 percent of their gross revenues in fees, compared to 20.4 percent for retail stores, 10 percent for on-airport car rental companies, 7.6 percent for off-airport car rental companies, and 56.3 percent for airport advertising companies.

¹ There are also two size standards that are not based on gross receipts at all: banks (\$100 million in total assets), and pay telephone providers (1500 employees). This NPRM does not propose or seek comments on these two size standards.

As a result, the submission suggests, airport advertisers are hampered in their ability to grow, or to retain DBE status, compared to other types of businesses. That is, applying the \$30 million size standard across the board results in an airport advertiser that wants to retain DBE status being confined to considerably lower revenues, net of airport concession fees, than a restaurant or retail store. This disparity raises some concerns about the equity of an across-the-board gross receipts-based standard.

Another way of stating the issue is that the submission from the advertising firm and its legal representative raises the question about whether a gross receipts-based size standard is a fair approach to determining a size standard for concessionaires at all. Arguably, it might be fairer to base all size standards in the concessions area on receipts net of airport concession fees paid to airports.

The Department has authority to set its own DBE size standards in the airport concessions area. In this respect, the concessions DBE program differs from the DBE program for Federally-assisted contracting, which by statute is tied to the Small Business Administration's gross receipts-based standards. All airport concessionaires pay some variety of lease or concession fee to airports, which suggests that it could be reasonable to establish a size standard that takes the variation in these fees into account.

Consequently, the Department is seeking comment on a proposal to change the basis for its concessionaire size standards. Under this proposal, the Department would establish a baseline that would be the same for all types of concession businesses. The size standard would then be set at a level of gross receipts that would permit each type of concession to retain that baseline amount, after lease or concession fees typical for its type of business had been deducted.

For example, suppose the baseline amount were \$30 million (\$40 million in the case of car rental companies), paralleling the current gross receipts size standards. To retain \$30 million or \$40 million, as applicable, after deducting average concession fees, certain types of concession businesses would have to have the following gross receipt size standards:

Option 1	Average % of receipts in fees	Gross receipts size standard
Food and Beverage	15.2	\$35,377,358
Retail Stores	20.4	37,688,442
Car Rental (on-airport)	10	44,444,444
Car rental (off-airport)	7.6	43,290,043
Advertising	56.3	68,649,885

Using \$30 or \$40 million as the baseline amount has the effect of increasing the size standards in all categories. The Department seeks comment on whether doing so is advisable.

A second way of establishing the baseline, based in part on ideas in the petitioners' submissions, would use the average percentage of receipts paid by all categories of concessions to reduce

the baseline amount. The average percentage of gross receipts paid to airports as concession fees across the five business categories fees is 21.9 percent. If we reduced the existing baselines by 21.9 percent, the baseline figure would be \$232.43 million for most concessions and \$31.24 million for car rental companies. An average type of concession business with gross receipts of \$30 million or \$40 million,

respectively, would retain this amount after concession fees were deducted.

We would then calculate the amount of gross receipts each type of business would need in order to retain \$23.43 million or \$31.24 million after paying the concession fees typical for its category. The following table displays the adjusted size standards that result from this calculation:

Option 2	Average % of receipts in fees	Gross receipts size standard
Food and Beverage	15.2	\$27,629,716
Retail Stores	20.4	29,434,673
Car Rental (on-airport)	10	34,911,111
Car rental (off-airport)	7.6	41,105,263
Advertising	56.3	53,615,560

This approach, while equalizing the position of the five categories of businesses with respect to receipts net of concession fees, reduces the size standards in three of the five categories. The Department seeks comment on whether, if this approach is taken, there should be a "grandfather" provision that would result in no reduction in the actual size standard for any business category (e.g., the standard for food and beverage and retail concessions would remain at \$30 million).

Of the types of concessions currently listed in Appendix A to Part 23, four appear to fit in the food and beverage category and nine in the retail store category. Advertising and car rental companies each have their own category. Thirteen appear to fit into a category that might be called "services" (e.g., insurance, shoe shine and barber/beauty shops, parking, hotels, vending machines). The data from the AAEE survey provided by the petitioner do not appear to include data on businesses of this type, and the Department seeks information, from AAEE or other sources, about the concession fees that these types of concessions typically pay. The Department also seeks information on the number of airports that have advertising concessions and the relative sizes of these concessionaires.

While the Department is willing to consider changing its DBE concession size standards, the Department has not yet decided whether to proceed with a final rule along these lines. The Department seeks comment on whether we should alter the size standards and, if so, whether the data and reasoning underlying the proposal are sound. The Department also seeks comments suggesting other alternatives.

We would also point out that the Department is working to finalize a pending Supplemental Notice of Proposed Rulemaking (SNPRM) to revise the entire DOT regulation (49 CFR part 23) concerning the airport concessions DBE program (65 FR 54454, September 8, 2000). In the context of considering this SNPRM and comments to it, the Department is reviewing the issue of whether a company in the business of placing advertising in an airport terminal on behalf of others, without offices on the airport, should be considered a concession for purposes of the DBE program. The decision on this issue will be made as part of the final rule resulting from the SNPRM. In seeking comments on the size standards issue in today's notice, the Department is not presupposing an answer to the question of whether advertising businesses of this kind ultimately will

be included in the DBE concessions program. The Department anticipates responding to comments on today's NPRM in the final rule document for overall revision to part 23.

Regulatory Analyses and Notices

Executive Order 12866

This rule is not a significant rule under Executive Order 12866. Nor is it significant under the Department's Rulemaking Policies and Procedures, because it proposes relatively modest adjustments to the size standards for firms participating in an existing program.

Regulatory Flexibility Act

The DBE program is aimed at improving contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals in airport concessions. Virtually all the businesses it affects are small entities. There is no doubt that a DBE rule always affects a substantial number of small entities.

Nevertheless, the Department certifies that, if adopted, this proposed rule would not have a significant economic effect on a substantial number of these entities. By making the size standards for concessionaires more equitable, from the perspective of receipts net of

concession fees, it is intended to make eligibility standards fairer. To the extent that it increases or decreases size standards for certain firms, it may affect the potential eligibility of certain individual firms. However, we do not believe that these changes will affect a large number of firms or overall DBE participation in airport concessions.

Paperwork Reduction Act

This NPRM does not contain information collection requirements subject to the Paperwork Reduction Act.

Federalism

The rule does not have sufficient Federalism impacts to warrant the preparation of a Federalism assessment. While the rule concerns the activities of state and local governments in DOT financial assistance programs, the rule does not significantly alter the role of state and local governments vis-a-vis DOT from the present part 23.

List of Subjects in 49 CFR Part 23

Administrative practice and procedure, Airports, Civil rights, Concessions, Government Contracts, Grant programs—transportation, Minority business, Reporting and recordkeeping requirements.

Issued this 26th day of November 2002, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 02-31338 Filed 12-11-02; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 020424095-2095-01, I.D. 032801B]

RIN 0648-AP25

Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes regulations for a fishing capacity reduction program in the fishery for the crab species managed under the Bering

Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan. This proposed rule would establish a program to reduce excess capacity and promote economic efficiency in the crab fishery. It is put forth under both special legislation and existing NMFS regulations governing fishing capacity reduction programs. The program's objectives include: increasing harvesting productivity for post-reduction fishermen (i.e., those harvesters remaining in the fishery after capacity is reduced), helping conserve and manage fishery resources, and encouraging rationalization of harvesting effort. Participation in the program would be voluntary; and payments would be made for withdrawing vessels from fishing, revoking fishing licenses, and surrendering fishing histories. NMFS would finance the program's \$100 million cost with a 30-year loan to be repaid by post-reduction fishermen.

DATES: NMFS must receive comments by January 27, 2003.

ADDRESSES: Mail or fax written comments about this proposed rule to Michael L. Grable. The mailing address is: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282. The fax number is (301) 713-1306. NMFS will not accept e-mail or internet comments.

If a comment involves any aspect of the proposed rule's collection of information requirements, send the comment both to Michael L. Grable and to the National Oceanic and Atmospheric Administration Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Anyone may obtain, from Michael L. Grable, the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis for this proposed rule.

Anyone wishing to contact the Restricted Access Management Program (which issues crab species fishing licenses) may do so at this address: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau Alaska 99802-1668. The fax number is (907) 586-7354.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713-2390.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

The Consolidated Appropriations Act 2001 (Pub. L. 106-554, section 144) directed the Secretary of Commerce to establish a \$100 million fishing capacity reduction program (crab program) in the

Bering Sea/Aleutian Islands king and Tanner crab fishery. Subsequently, that law was amended twice (Pub. L. 107-20, section 2201; and Pub. L. 107-117, section 205) to further clarify the pool of vessels eligible to participate in the crab fishery, and change the crab program's funding from a \$50 million appropriation and a \$50 million loan to a \$100 million loan (reduction loan). NMFS authority to make this loan resides in sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g)(MMA)(Title XI).

The Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (crab FMP) was developed by the North Pacific Fishery Management Council and approved and implemented by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)(MSA). The Council also developed Amendment 10 to the crab FMP which further defined the eligibility criteria for crab license limitation program (LLP) licenses. Regulations implementing the crab FMP govern management of this fishery.

Fishing capacity reduction programs, generally, are governed by subpart L to 50 CFR part 600, a framework rule promulgated pursuant to section 312 of the MSA (16 U.S.C. 1861a(b)-(e)). NMFS proposes this rule as a new § 600.1018 appearing immediately after the framework rule's last existing section.

Primary Statutory Objective

Section 144 established the crab program's primary objective as reducing "the fishing capacity in the BSAI crab fisheries by permanently reducing the number of license limitation program crab licenses"

Key Steps

The proposed crab program is complicated and the following listing of key steps is intended to facilitate understanding by the public. NMFS would:

- (a) Propose the regulations;
- (b) Publish final regulations;
- (c) Invite crab program bids;
- (d) Receive and tally the bids;
- (e) Accept the bids;
- (f) Conduct a referendum on the results of the bidding;
- (g) Notify referendum voters and accepted bidders of the referendum results;
- (h) Make reduction payments under reduction contracts; and
- (i) Collect reduction loan repayment fees.

Note: Any time the word "we" is used in this document, it refers to NMFS.