customers as defined in FmHA regulations for the period of the guarantee.

3. The amount which this borrower will save due to the write off and/or the interest rate reduction is permanently cancelled and no attempt will ever be made to collect that portion of the debt.

4. The borrower's cash flow projections are based on our *past experience* with the borrower and demonstrate that the borrower will have a positive cash flow with the write off and/or interest rate reduction.

(Name of Lender)
By: _____
Title: _____

Lender's IRS I.D. No.
Date: _____

Authorities: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Dated: March 7, 1985.

Kathleen W. Lawrence,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc. 85-6070 Filed 3-12-85; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization; Miscellaneous Amendment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adds Indianapolis, Indiana to the listing of interior locations of INS service offices.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: With a view toward more efficient management, the Service has established a suboffice in Indianapolis, Indiana under the jurisdiction of the Chicago, Illinois district office. Therefore, the Service is amending its listing of interior locations to include Indianapolis..

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is unnecessary because the rule relates to agency organization and will promote better service to the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a substantial number of small entities. This is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Organization and functions (government agencies).

PART 100—STATEMENT OF ORGANIZATION

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

§ 100.4 [Amended]

Section 100.4(c)(1) is amended by adding in alphabetical sequence "Indianapolis, Indiana".

(Sec. 103 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103))

Dated: March 4, 1985.

Thomas C. Ferguson,

Deputy Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-5935 Filed 3-12-85; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 214

Nonimmigrant Classes; Reopening or Reconsideration; Technical Amendment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule makes a technical amendment to 8 CFR to reflect the transfer of appellate authority formerly held by INS regional commissioners to the Associate Commissioner, Examinations pursuant to a final rule published September 22, 1983 at 48 FR 43160.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: A final rule amending 8 CFR 103.1(f) published September 22, 1983 at 48 FR 43160 transferred to the Associate Commissioner, Examinations the appellate authority formerly held by INS regional commissioners. This rule amends 8 CFR 214.4(k) to reflect this transfer of authority.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency organization and management.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Students.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended to read as follows:

PART 214—NONIMMIGRANT CLASSES

In § 214.4, paragraph (k) is revised to read as follows:

§ 214.4 Withdrawal of school approval.

* * * * *

(k) *Reopening or reconsideration.* Except as otherwise provided in this section, a motion to reopen or reconsider shall be subject to the requirement of § 103.5 of this chapter. The special inquiry officer may upon his/her own motion, or upon motion of the trial attorney or the respondent, reopen or reconsider any case in which a decision has been made, unless jurisdiction in the case is vested in an appellate authority under Part 103 of this chapter. A motion to reopen shall not be granted by a special inquiry officer unless he/she is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing.

(Secs. 103 and 214 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1184))

Dated: March 7, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-5958 Filed 3-12-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85-009]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the

regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the State of Minnesota from Class A to Class Free. This rule is necessary because it has been determined that this State meets the standards for Class Free status. The rule relieves restrictions on the interstate movement of cattle from the State of Minnesota.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register on November 29, 1984 (49 FR 46871–46872), amended the brucellosis regulations in 9 CFR Part 78 by changing the classification of the State of Minnesota from Class A to Class Free. The amendment, which was made effective November 29, 1984, relieves certain restrictions on the interstate movement of cattle from Minnesota.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of November 29, 1984, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of the State of Minnesota reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter, or to quarantined feedlots are not affected by the changes in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by these changes in status. It has been determined that the changes in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle Hogs, Quarantine, Transportation.

PART 78—[AMENDED]

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 49 FR 46871–46872 on November 29, 1984, is adopted as a final rule without change.

Authority: Secs. 4, 5, 6, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 7th day of March 1985.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–5944 Filed 3–12–85; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 101

Payments Received for Testing the Waters Activities; Transmittal to Congress

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal to Congress.

SUMMARY: The Commission's regulations governing "testing the waters" activities at 11 CFR 100.7(b)(1), 100.8(b)(1) and 101.3 have been revised and transmitted to Congress pursuant to 2 U.S.C. 438(d). These regulations permit an individual to receive and expend funds to test the feasibility of a campaign for Federal office without becoming a candidate under the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* ("the Act"). The revised rules amend §§ 100.7(b)(1) and 100.8(b)(1) to clarify that the "testing the waters" exemptions do not apply to campaign activities undertaken once an individual decides to become a candidate. The regulations also revise §§ 100.7(b)(1), 100.8(b)(1), and 101.3 to prohibit the use of funds in excess of the contribution limits or from prohibited sources under the Act for "testing the waters" activities. Finally, the new rules make minor clarifying amendments to §§ 100.7(b)(1) and 100.8(b)(1) in two areas. Further information on the revisions is provided in the supplementary information which follows.

EFFECTIVE DATE: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW, Washington, D.C. 20463, (202) 523–4143 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revised rules to govern "testing the waters" activities at 11 CFR 100.7(b)(1), 100.8(b)(1), and 101.3. On July 31, 1984, the Commission issued a Notice of Proposed Rulemaking seeking comments on proposed revisions to these regulations. 49 FR 30509. One comment was received in response to the Notice from the National Republican Congressional Committee ("NRCC"). The Commission has also considered comments filed by the National Education Association ("NEA") and Wayne Lela, an independent Presidential candidate, on the issues raised in its Advance Notice of Proposed Rulemaking (49 FR 1995) issued on February 17, 1984.

2 U.S.C. 438(d) requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. These regulations were transmitted to Congress on March 8, 1985.

Explanation and Justification

Under 2 U.S.C. 431(2), an individual is deemed to be a "candidate" for purposes of the Act if he or she receives contributions or makes expenditures in excess of $5,000 or gives consent to another person to receive contributions or make expenditures on his or her

behalf aggregating in excess of $5,000. The Act thus establishes automatic dollar thresholds for attaining candidate status which trigger its registration and reporting requirements.

Through its regulations, the Commission has established limited exceptions to these automatic thresholds which permit an individual to test the feasibility of a campaign for Federal office without becoming a candidate under the Act. Commonly referred to as the "testing the waters" exceptions, 11 CFR 100.7(b)(1) and 100.8(b)(1) exclude funds received and payments made to determine whether an individual should become a candidate from the definitions of "contribution" and "expenditure" respectively. An individual who undertakes "testing the waters" activities must nevertheless keep records of all funds received and payments made in connection with these activities. The Commission's regulations provide that if the person subsequently becomes a candidate, those receipts and disbursements become contributions and expenditures under the Act. Thus, under §§ 100.7(b)(1), 100.8(b)(1), and 101.3, such funds received and payments made must be reported in the first report filed by the candidate's principal campaign committee.

The revised rules amend §§ 100.7(b)(1), 100.8(b)(1), and 101.3 in three respects. First, §§ 100.7(b)(1) and 100.8(b)(1) have been amended to further clarify that the "testing the waters" exemptions do not apply to campaign activities undertaken once an individual has decided to become a candidate. A second set of revisions to §§ 100.7(b)(1), 100.8(b)(1), and 101.3 prohibit the use of funds in excess of the contribution limits or from prohibited sources for "testing the waters" activities. Finally, minor clarifying amendments have been made in §§ 100.7(b)(1) and 100.8(b)(1).

A. Scope of Permissible Activities Under the "Testing the Waters" Exemptions

The current "testing the waters" regulations are explicitly limited "solely" to activities designed to evaluate a potential candidacy. Examples of permissible activities included in the present regulations are expenses for conducting a poll, telephone calls, and travel, to determine whether an individual should become a candidate. Currently, §§ 100.7(b)(1) and 100.8(b)(1) expressly prohibit receipts and disbursements for general public political advertising, such as television or newspaper advertisements, or efforts to raise funds for use after the individual becomes a candidate. The Commission has distinguished such activities as amounting to the establishment of a campaign organization. *See* Advisory Opinions ("AO") 1979–26, 1981–32, 1982–3, and 1982–19.

Despite its attempts to limit the scope of the "testing the waters" exceptions, the Commission has concluded that the present rules could be interpreted to include activities beyond those they were originally intended to encompass. The Commission has, therefore, amended the rules to ensure that the "testing the waters" exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act to permit individuals to conduct certain activities while deciding whether to become a candidate for Federal office, without making their activities immediately public.

Accordingly, the Commission has amended §§ 100.7(b)(1) and 100.8(b)(1) to set forth an expanded list of examples of activities that, dependent upon the circumstances, may be considered to indicate that an individual has decided to become a candidate and is no longer "testing the waters." The Commission believes the inclusion of examples of activities in the text of the regulations will provide greater assistance in determining when someone is undertaking permissible "testing the waters" activities than possibly vague general factors. First, the Commission has amended these sections to include as examples the activities that are specifically prohibited under the current "testing the waters" provisions. The revised rules retain use of public political advertising to publicize the individual's campaign as an example of an activity not permissible as "testing the waters" in §§ 100.7(b)(1)(ii)(A) and 100.8(b)(1)(ii)(A). Moreover, based on similar provisions in the current regulations, §§ 100.7(b)(1)(ii)(B) and 100.8(b)(1)(ii)(B) include as an example raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activities designed to amass campaign funds that would be spent after the individual becomes a candidate. These revisions are in accord with the Commission's determination in AOs 1979–26 and 1981–32 that to stay within the exemption, funds must be raised only for the purpose of financing the exempt activity.

Secondly, the revised rules set forth three additional examples of other activities indicating that an individual is no longer "testing the waters" that were not previously enumerated in the regulations. The Commission has concluded, on the basis of its experience and the comments received on the Notice of Proposed Rulemaking, that these examples further illustrate the line drawn between "testing the waters" activities and campaigning after an individual has decided to become a candidate.

Thus, paragraph (b)(1)(ii)(C) in §§ 100.7 and 100.8 concerns whether the individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office. *See* AO 1981–32. Furthermore, if an individual conducts activities in close proximity to the election or over a protracted period of time, the Commission may consider such activity an indication that the individual has decided to become a candidate under §§ 100.7(b)(1)(ii)(D) and 100.8(b)(1)(ii)(D). Sections 100.7(b)(1)(ii)(E) and 100.8(b)(1)(ii)(E) contain as a final example taking action to qualify for the ballot under State law. This example utilizes NRCC's suggestion that the State filing deadline is an appropriate time for determining whether an individual has become a candidate, but does not make it the exclusive factor.

The Commission also considered including an illustrative list of factors that could be used in determining whether particular activities are permissible under the "testing the waters" exemptions. A proposed list of determinative factors was contained in the Notice of Proposed Rulemaking in recognition of the fact that activities, such as polling and travel, may be legitimate "testing the waters" activities or campaigning depending upon the surrounding circumstances. Upon further consideration, however, the Commission decided not to include these factors in the final rules. The Commission concluded that the inclusion of general, possibly vague factors would not aid in clarifying the narrow scope of the "testing the waters" provisions. This is particularly so since the determination of whether an individual has crossed the line from "testing the waters" to campaigning must be made on a case-by-case basis.

B. Applicability of Contribution Limitations and Prohibitions to "Testing the Waters" Activities

The Commission has also revised the rules to prohibit the use of funds in excess of the contribution limits or from sources prohibited under the Act to be used for "testing the waters" activities.

Sections 100.7(b)(1), 100.8(b)(1), and 101.3 currently provide that funds received or expended for "testing the waters" become reportable contributions and expenditures if the individual becomes a candidate. Section 101.3 also currently provides that any excessive or prohibited contributions received during the "testing the waters" period must be refunded within 10 days after the individual becomes a candidate.

The Commission has reached the conclusion that the present regulations permit individuals to accept funds in excess of the contribution limits of 2 U.S.C. 441a(a) and funds from prohibited sources, such as corporations and labor organizations, for "testing the waters" activities. *See* AOs 1982–19 and 1983–9. In AO 1982–19, the Commission concluded that the prohibitions, limitations, and reporting requirements of the Act become applicable only when an individual becomes a candidate. However, pursuant to § 101.3, the Commission required that the individual repay or refund any excessive or prohibited contributions received during the "testing the waters" period within 10 days after becoming a candidate. Similarly, the Commission determined in AO 1983–9 that an individual could make loans from his personal funds to an exploratory committee in excess of the expenditure limitations of the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* and still be eligible to receive primary matching funds. The Commission required pursuant to § 101.3 that funds in excess of the $50,000 expenditure limitation imposed by 26 U.S.C. § 9035(b) be repaid to him within 10 days after he declared his candidacy.

The Commission has reconsidered this issue and determined that permitting prohibited funds to be used for "testing the waters" activities extended the exemptions beyond the narrow range of activities they were originally intended to encompass. Thus, §§ 100.7(b)(1), 100.8(b)(1), and 101.3, as amended, now require that all funds received for "testing the waters" must be subject to the Act's limitations and prohibitions. The revised rules thus overrule the Commission's decisions on this question in AOs 1982–19 and 1983–9. The Commission views the amended regulations as reducing the potential for circumvention of the prohibitions and limitations of the Act. These revisions also ensure consistent application of the Act's contribution limitations and prohibitions.

Two commentors objected to the proposed rules to the extent they prohibited the use of excessive contributions and funds from prohibited sources for "testing the waters" activities. The Commission has considered these comments, but decided not to follow them in adopting the final rules. The Commission believes that the revised rules will remedy the situation that results under the present regulations when funds that are permissible when donated subsequently become illegal and must be refunded when the individual becomes a candidate. Moreover, the revised rules are intended to clear up any misconceptions that the "testing the waters" provisions may be used to raise "seed money" for prospective candidates. The current regulations are clear in prohibiting the use of the "testing the waters" exemptions to raise money for a future campaign. The Commission has reinforced its prohibition of this practice by reiterating the policy of the present regulations in its list of examples.

C. Miscellaneous Amendments

Finally, two minor amendments have been made to §§ 100.7(b)(1) and 100.8(b)(1). The regulations revise these sections to include a cross-reference to the recordkeeping the reporting requirements of § 101.3. In addition, the revisions clarify that each of these sections provides an exemption solely to the definition of either "contribution" or "expenditure" by limiting the section to either "funds received" or "payments made."

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, reporting and recordkeeping requirements, elections.

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. 11 CFR Part 100 is amended by revising §§ 100.7(b)(1) and 100.8(b)(1) to read as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(1) (i) Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.

(ii) This exemption does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to the election or over a protracted period of time.

(E) The individual has taken action to qualify for the ballot under State law.

* * * * *

§ 100.8 Expenditure (2 U.S.C. 431(9).

* * * * *

(b) * * *

(1) (i) Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures. Examples of activities permissible under this exemption if they are conducted to determine whether an indivdual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such payments. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act. Such expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made.

(ii) This exemption does not apply to payments made for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to the election or over a protracted period of time.

(E) The individual has taken action to quality for the ballot under State law.

* * * * *

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

2. 11 CFR Part 101 is amended by revising § 101.3 to read as follows:

§ 101.3 Funds received or expended prior to becoming a candidate (2 U.S.C. 432(e)(2)).

When an individual becomes a candidate, all funds received or payments made in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or his or her campaign prior to becoming a candidate shall be considered contributions or expenditures under the Act and shall be reported in accordance with 11 CFR 104.3 in the first report filed by such candidate's principal campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received (see 11 CFR 102.9(a)), and all expenditures made (see 11 CFR 102.9(b)) in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or the individual's campaign prior to becoming a candidate.

Authority: 2 U.S.C. 431(8), 431(9), 432(e)(2), and 437d(8).

Dated: March 8, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85-6020 Filed 3-12-85; 8:45 am]

BILLING CODE 6715-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Engineering Services

AGENCY: Small Business Administration.

ACTION: Result of size standard study; decision not the change rule.

SUMMARY: SBA has reviewed, in depth, the size standard for engineering services (except for military and aerospace equipment and weapons) and decided to retain the current size standard of $7.5 million in average annual receipts which was established in 1975.

In its Final Rule of February 9, 1984 (49 FR 5023), SBA was specifically committed to make this study as well as review several other industries where there was controversy over the appropriate size standard. The study of the engineering services size standard included an examination of the industry structure, the nature and distribution of Federal contracts among engineering firms, the impact of changes to alternative size standards and the comments received from firms, associations, and Federal agencies. SBA found no persuasive reason to make any change.

FOR FURTHER INFORMATION CONTACT: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street NW., Room 500, Washington, D.C. 20416, (202) 653-6373.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1984, the Small Business Administration published a Final Rule in the **Federal Register** (49 FR 5023) in which its size standards were comprehensively revised. Almost all dollar size standards were given an 81 percent increase to adjust for inflation since they were last established in 1975. One industry in which its size standard was maintained, however, was engineering services, with the exception that an increase was implemented for engineering specifically for military and aerospace equipment and weapons. The need for further study of the engineering services (except for military and aerospace equipment and weapons) size standard became obvious when almost all comments were opposed to SBA's May 6, 1983, proposal to lower the size standard to $3.5 million. Those commenting took widely diverse positions, a majority wanting the size standard much lower than the proposed $3.5 million while almost all others wished to retain the standard at $7.5 million.

Two advance notices and one notice of proposal to revise SBA size standards were published in the **Federal Register**, 45 FR 15442, March 10, 1980; 47 FR 18992, May 3, 1982, and 48 FR 20560, May 6, 1983, and in response to each of these proposals more comments were received concerning the size standard for engineering services than for any other industry, indicating the interest in this size standard.

Industry Structure

Engineering services consists of a number of types of engineering. Approximately 84 percent of the dollar receipts of engineering service firms is for engineering design services used in construction. The engineering service industry is not highly sensitive to Federal procurements; less than 6 percent of its receipts come from Federal contracts.

There are slightly over 15,000 engineering service firms with at least one employee of which 250 firms exceed SBA's current size standard of $7.5 million. These 250 large engineering firms account for approximately 50 percent of the industry's receipts.

There is a clearly established trend for the large firms in this industry to grow in size, mostly through acquisitions and mergers with other large or intermediate size engineering firms. There was a recent increase in the number of very small firms, mostly with one or two engineers. Data showing these trends are presented in Table 1 that follows:

TABLE 1.—CONSULTING ENGINEER'S CENSUS OF FIRMS COMPARATIVE DATA—1978-1980-1982

(Encompasses firms primarily in the civil engineering field)

		Employment Size of Firm			
		1-25	26-100	Over 100	Total
Number of firms	1978	8,428	1,333	487	10,248
	1980	8,450	1,813	628	10,891
	1982	11,022	1,730	603	13,355
Percent increase	1978-1980	+0.2	+36.0	+29.0	+6.3
	1980-1982	+30.4	−4.6	−4.0	+22.6
Engineers per firm	1980	2.4	9.5	61.6	7.0
	1982	2.2	9.3	92.9	7.2

TABLE 1.—CONSULTING ENGINEER'S CENSUS OF FIRMS COMPARATIVE DATA—1978-1980-1982—Continued

[Encompasses firms primarily in the civil engineering field]

		Employment Size of Firm			
		1-25	26-100	Over 100	Total
Number of engineers	1980	19,944	17,173	38,598	75,715
	1982	24,689	16,020	56,007	96,716
Percent increase	1980-1982	23.8	-6.7	45.1	27.7

Source: Consulting Engineer: June 1980 and June 1982.

Comments to SBA's Proposal of May 3, 1982

On May 3, 1982, SBA proposed a 150-employee size standard for all engineering services except marine engineering. General support for this proposal was received from firms providing engineering services for military and aerospace equipment and weapons. Requests for a size standard much lower than the 150-employee level proposed came from a number of firms engaged in construction-related engineering services. Although most of these were large firms, the few very small firms that commented also wished the size standard lower than that proposed.

Comments to SBA's Proposal of May 6, 1983

For the first time SBA proposed to separate engineering services for military and aerospace equipment and weapons from other engineering, each with a separate size standard. The proposal for a $13.5 million size standard for engineering services for military and aerospace equipment and weapons was well received and was later implemented in the Final Rule of February 9, 1984. A size standard of $3.5 million was proposed for engineering services other than for military equipment and weapons and was the same standard proposed for those industries with almost a universe of the smallest firms. This proposal was to reduce the engineering services size standard to less than half while the size standards of other service industries were being adjusted upwards for inflation by 81 percent.

There were 69 comments to the May 6, 1983, proposal from construction-related engineering firms of which 48 came from firms over the size standard (with over $7.5 million in annual receipts). Only five of these large firms supported the proposal for a $3.5 million size standard, while 41 other large firms wanted the size standard reduced much lower than proposed, either to $500,000, $750,000, or $1 million. The comment of one large engineering firm was vague and one other stated only that set-asides should be abolished. Four small firms, identified as having less than $2 million in annual receipts, wanted a size standard of less than $2 million. Three firms identified as having receipts close to the current $7.5 million size standard wanted the size standard increased. Eight firms with receipts between $3.5 million and $7.5 million wished the $7.5 million standard retained. The size of six firms could not be determined; three desired size standards from $1 to $2 million, two wished to retain the current size standard of $7.5 million and one wanted set-asides abolished. Industry trade associations desired a lower size standard than the $3.5 million proposed.

In summary, the above shows that large firms, predominantly, wanted the size standard lowered drastically. The firms considered small reflected mixed results, with a majority not wanting the standard lowered. SBA, however, must consider the quality of the arguments on both sides of the issue rather than simply count stated opinions. A summary of comments by construction-related engineering firms is presented in Table 2.

SUMMARY OF COMMENTS BY CONSTRUCTION-RELATED ENGINEERING FIRMS OF ALL SIZES

Position of firm commenting	Number of comments		
	March 1980 notice	May 1982 notice	May 1983 notice
Wants standard above $7.5 million	1	1	3
Wants to keep $7.5 million standard	8	5	10
Wants at least $2 million but under $7.5M	11	27	[2] 8
Wants less than $3.5 million[1]	4	35	[3] 46
Vague as to position	2	3	1
Wants set-asides abolished, no suggested size standard	0	7	1
Total	26	76	69

[1] Overlapping with size class shown on line above because levels proposed varied from notice to notice as explained in narrative preceding these tables.

[2] Five of these were large firms willing to accept a $3.5 million size standard.

[3] Of the 46 firms taking this position, 41 were identified as large firms, four as small firms, and one firm's size could not be determined.

Position of Federal Agencies

A number of Federal agencies were contacted on the May 1983 proposal for reducing the size standard to $3.5 million. In summary, a size standard of $3.5 million was acceptable for most construction-related engineering services to most agencies. In areas of high technology or construction contracts of great complexity, such as construction of nuclear facilities, the agencies desired the retention of the $7.5 million size standard.

Federal agencies opposed a reduction of the size standard to levels below $3.5 million stating that such a lowering would significantly diminish set-asides. They said that if the size standard were lowered to $1 million, they would not set aside any contracts for small business.

Federal Contracts for Engineering Services—FY 1983

The Department of Defense accounted for approximately 80 percent of all FY 1983 engineering contract dollars. Approximately 68 percent of the dollar value for DoD's FY 1983 construction-related engineering services went to small firms; 57 percent of the total dollar values being set aside for small business. For DoD initial actions of under $250,000, approximately 94 percent of all FY 1983 construction-related engineering service contract dollars went to small business. On open competition, small firms received 70 percent of such construction-related contracts of under $100,000, about half the contracts between $100,000 and $250,000 and only 30 percent of the contracts over $250,000.

For DoD engineering service contracts not related to construction, only 15 percent of all FY 1983 contract dollars went to small firms. However, many of these contracts are related to military equipment and weapons for which a separate size standard was established in the Final Rule of February 9, 1984, and is not at issue here.

In the major nondefense procuring agencies, only 40 percent of FY 1983 engineering service awards were through set-asides and 87 percent of all initial awards were under $100,000 in value. In number of total awards, small firms received 91 percent. Small firms did well in open competition with 92 percent of awards of under $100,000 and 61 percent of awards of over $100,000.

An examination of contracts to specific firms shows that there was no concentration of awards among few firms or among firms of any size class. Most firms that received awards received less than $100,000 in awards

and only one award in FY 1983. No firm received enough in Federal contracts to make it largely dependent on the Federal Government. There were 2,970 engineering service contracts issued in FY 1983, much less in number than the over 15,000 firms in the industry. Consequently, most firms did not receive even one award. Large firms that received FY 1983 awards, received several times the award dollars, on average, than that received by firms within the current $7.5 million size standard.

Federal Contracts FY 1984

Federal procurement data for FY 1984 was not available at the time of this writing. Early in the 1984 fiscal year a provision of the Department of Defense construction appropriation authorization limited set-asides for DoD construction-related engineering service contracts to contracts with a total value of no more than $85,000. The impact of this provision could not be assessed, lacking specific data.

Findings

The review of this industry and its size standard leads to these findings: 1. There is wide distribution of engineering awards among firms. No firm could be identified as being highly dependent on Federal awards or receiving an unusually large portion of awards. Most small firms that received awards in FY 1983 received awards with a total value of under $100,000 and most only one award.

2. Large firms have adequate access to the Federal market and in FY 1983 received several times the award dollars than firms below $7.5 million size standard.

3. Firms of under $7.5 million in annual receipts are successful in bidding in open competition against larger firms except for awards in excess of $250,000.

4. A lowering of the size standard to $3.5 million would not significantly change the level of set-asides since virtually all the same contracts could be set aside (exception is the few contracts requiring high technology). In FY 1983, 92 percent of initial awards were below $250,000 and 72 percent below $100,000; these are within the capabilities of firms below the recently proposed size standard of $3.5 million.

5. The 300 engineering firms that would lose eligibility if the standard were lowered to $3.5 million did not receive an abnormal amount of Federal contracts. If the standard were lowered, procurements with complex and high technology requirements would not be set aside. This would be to the advantage of large firms at the expense of the group losing eligibility.

6. A lowering of the size standard to less than $3.5 million would result in less set-asides. Virtually no set asides would be made at a size standard of $1 million. Set-asides are mandated by law and SBA cannot take any action that would counteract the Federal law by lowering the standard to a point of no set-asides.

7. There was little support for SBA's proposal of May 1983 to lower the size standard to $3.5 million. Opposition came from firms in all classes, including the very few small firms that commented.

8. Only four construction-related engineering firms commenting to SBA's 1983 proposal were identified as having annual receipts below $3.5 million. All of these firms wanted the size standard below the $3.5 million proposed. Two of these firms have been identified as recent subcontractors to larger engineering firms but there may be more. Since there are 15,000 firms in this class, the conspicuous absence of comments from the these small firms suggests their lack of concern for any level of the size standard under consideration and cannot be considered as support for lowering it from its present levels.

9. Should the size standard be lowered to a point between $3.5 and $7.5 million, no significant change would take place. A few firms at the margin would lose eligibility with no evidence that they have an undue advantage over firms of other sizes. there was no support for such a change. Under a lowering to a $5 million size standard, approximately 125 firms would lose eligibility for set-asides.

10. There is little argument to raise the size standard above the present level of $7.5 million. Only three firms commenting desired such a raise. Industry data do not support such a raise and procurement data clearly show that a sufficient share of Federal contracts can go to small firms without raising the size standard.

11. A $3.5 million size standard is used by SBA for those service industries consisting overwhelmingly of the smallest firms. Engineering services does not fit this pattern. In the field of consulting engineering, in 1983, there were 15 firms with receipts in excess of $100 million and half the industry's receipts were by the 250 firms with annual receipts in excess of $7.5 million, the current size standard.

Decision

Since there is no persuasive reason for a change, it was decided that the size standard for engineering services, except for military and aerospace equipment and except for military weapons, be retained at the current level of $7.5 million.

Accordingly, pursuant to authority contained in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, as amended, notice is hereby given that the size standard for Engineering Services in 13 CFR 121.2 will not be changed.

Dated: December 14, 1984.

James C. Sanders,

Administrator.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM 79-76-223; Arkansas-1; Order No. 412]

High-Cost Gas Produced From Tight Formations; Arkansas

Issued March 7, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. (18 CFR 271.703) (1983). Under Section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the Federal Ehergy Regulatory Commission adopts the recommendation of the Arkansas Oil and Gas Commission that the Arbuckle Formation in White County, Arkansas, in sections 1, 2, 11, 12, 13, and 14 of Township 8 North, Range 8 West, and Sections 6, 7, and 18 of Township 8 North, Range 7 West, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective April 6, 1985.

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