

5. Section 3.362 is added to read as follows:

§ 3.362 Offsets under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a).

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.

(b) *Offset of veterans' awards of compensation.* If a veteran's disability is the basis of a judgment under 28 U.S.C. 1346(b) awarded, or a settlement or compromise under 28 U.S.C. 2672 or 2677 entered, on or after December 1, 1962, the amount to be offset under 38 U.S.C. 1151(b) from any compensation awarded under 38 U.S.C. 1151(a) is the entire amount of the veteran's share of the judgment, settlement, or compromise, including the veteran's proportional share of attorney fees.

(c) *Offset of survivors' awards of dependency and indemnity compensation.* If a veteran's death is the basis of a judgment under 28 U.S.C. 1346(b) awarded, or a settlement or compromise under 28 U.S.C. 2672 or 2677 entered, on or after December 1, 1962, the amount to be offset under 38 U.S.C. 1151(b) from any dependency and indemnity compensation awarded under 38 U.S.C. 1151(a) to a survivor is only the amount of the judgment, settlement, or compromise representing damages for the veteran's death the survivor receives in an individual capacity or as distribution from the decedent veteran's estate of sums included in the judgment, settlement, or compromise to compensate for harm suffered by the survivor, plus the survivor's proportional share of attorney fees.

(d) *Offset of structured settlements.* This paragraph applies if a veteran's disability or death is the basis of a structured settlement or structured compromise under 28 U.S.C. 2672 or 2677 entered on or after December 1, 1962.

(1) *The amount to be offset.* The amount to be offset under 38 U.S.C. 1151(b) from benefits awarded under 38 U.S.C. 1151(a) is the veteran's or survivor's proportional share of the cost to the United States of the settlement or compromise, including the veteran's or survivor's proportional share of attorney fees.

(2) *When the offset begins.* The offset of benefits awarded under 38 U.S.C. 1151(a) begins the first month after the structured settlement or structured compromise has become final that such benefits would otherwise be paid.

(Authority: 38 U.S.C. 1151)

6. Section 3.363 is added to read as follows:

§ 3.363 Bar to benefits under 38 U.S.C. 1151.

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.

(b) *Administrative award, compromises, or settlements, or judgments that bar benefits under 38 U.S.C. 1151.* If a veteran's disability or death was the basis of an administrative award under 28 U.S.C. 1346(b) made, or a settlement or compromise under 28 U.S.C. 2672 or 2677 finalized, before December 1, 1962, VA may not award benefits under 38 U.S.C. 1151 for any period after such award, settlement, or compromise was made or became final. If a veteran's disability or death was the basis of a judgment that became final before December 1, 1962, VA may award benefits under 38 U.S.C. 1151 for the disability or death unless the terms of the judgment provide otherwise.

(Authority: 38 U.S.C. 1151)

7. In § 3.400, the section heading of paragraph (i) is revised to read as follows:

§ 3.400 General.

* * * * *

(i) *Disability or death due to hospitalization, etc.* (38 U.S.C. 5110(c), (d); Public Law 87-825; §§ 3.358, 3.361, and 3.800).* * *

§ 3.708 [Amended]

8. Section 3.708, paragraph (a)(4) is amended by removing "or training," and adding, in its place, "or hospital care, training, or compensated work therapy program. See §§ 3.358 and 3.361."

9. Section 3.800 is amended by adding introductory text to read as follows:

§ 3.800 Disability or death due to hospitalization, etc.

This section applies to claims received by VA before October 1, 1997. For claims received by VA on or after October 1, 1997, see §§ 3.362 and 3.363.

* * * * *

10. In § 3.807, the last sentence of paragraph (c) is amended by removing "§ 3.800" and adding, in its place, "§§ 3.358, 3.361".

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-059-200206(b); FRL-7420-1]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve revisions to the Alabama Department of Environmental Management's nitrogen oxides budget and allowance trading program submitted on September 13, 2002, by the State of Alabama. These revisions are designed to provide greater flexibility to reward sources that achieve quantifiable reductions ahead of the compliance deadline by allowing sources to request credit for early reductions obtained during the 2001 control period.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 13, 2003.

ADDRESSES: Written comments should be addressed to Sean Lakeman, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street, Atlanta, Georgia 30303-8960.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development

Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303-8960. Mr. Lakeman can also be reached by phone at (404) 562-9043 or by electronic mail at lakeman.sean@epa.gov.

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.

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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: