

(2) With respect to an integrated processor-refiner, the moving of raw cane sugar into the refining process, the shipment of raw cane sugar in conjunction with a sale or other disposition, or the forfeiture of such sugar to the CCC. Beet sugar or raw cane sugar will be deemed to have been marketed as of the date of shipment of such sugar from the facility of the first processor, the date on which such raw cane sugar was moved into the refining process by an integrated processor-refiner, or the date on which such sugar was forfeited to the CCC.

*Raw cane sugar* means crystalline raw sugar, cane syrup or edible molasses, processed from domestically produced sugarcane or sugarcane molasses.

*Raw value* of any quantity of raw cane sugar means its equivalent in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope.

**§ 1435.202 Amount of the marketing assessment.**

(a) The amount of the beet sugar marketing assessment to be remitted shall be the sum determined by multiplying the number of pounds of beet sugar marketed in a calendar month by 0.193.

(b) The amount of the marketing assessment on raw cane sugar to be remitted to CCC shall be the sum determined by multiplying the number of pounds, raw value, of raw cane sugar marketed in a calendar month by 0.18 cents.

**§ 1435.203 Remittance.**

(a) First processors shall remit marketing assessments to the CCC by the last day of the month following the month in which the beet sugar or raw cane sugar was marketed.

(b)(1) First processors shall prepare and submit a form CCC-80 each month that shows the quantity of:

(i) Beet sugar marketed during the previous calendar month; and

(ii) Raw cane sugar marketed during the previous calendar month.

(2) Form CCC-80 shall be submitted along with the remittance of the assessment.

(c) Remittances not received by the last day of the calendar month following the month the beet sugar or raw cane sugar was marketed will be considered late and the processor shall be assessed a civil penalty and interest in accordance with § 1435.204 of this subpart.

(d) Sugar processors shall send the remittance and form CCC-80 as specified by CCC.

**§ 1435.204 Civil penalties and interest.**

(a) Any first processor who: (1) Fails to remit, on a timely basis, the entire amount of any marketing assessment,

(2) Fails to submit form CCC-80 fully and accurately completed, or

(3) Fails to maintain and permit inspection of records as required by section 1435.205 of this subpart, shall be liable for a civil penalty of up to 100 percent of the relevant national average price support loan rate times the quantity of sugar involved in the violation.

(b) In addition to any civil penalty, interest on unpaid assessments or deficiencies in assessments paid shall be due and payable at the rate specified in part 1403 of this chapter beginning on the first day of the month after the marketing assessment was due in accordance with § 1435.203 of this subpart and such interest shall continue to accrue until such amount is paid. Interest shall be charged for amounts that are not received by the required date; however if full payment of an assessment is received within 30 calendar days of the date on which the assessment was due, no interest shall apply.

(c) The Controller, CCC, shall assess civil penalties and interest.

(d) Administrative appeal of any imposition of civil penalties shall be made by filing a timely notice of appeal, within 30 calendar days after the date of imposition, to the Director of the ASCS Appeals Division, ASCS, in Washington, DC.

**§ 1435.205 Maintenance and inspection of records.**

Representatives of CCC shall have the right to have access to the premises of the processor in order to inspect, examine, and make copies of the books, records, accounts, and other data as are deemed necessary by CCC or CCC's agents to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than three years from the date the remittance is made to CCC.

**§ 1435.206 Refunds.**

Marketing assessments are nonrefundable. However, upon presentation of evidence acceptable to the Controller, CCC, adjustments in an assessment may be made by CCC to reflect the actual marketings of beet sugar and raw cane sugar.

Signed at Washington, DC this 8th day of October, 1991.

Keith D. Bjerke,

*Executive Vice-President, Commodity Credit Corporation.*

[FR Doc. 91-25758 Filed 10-28-91; 8:45 am]

BILLING CODE 3410-05-M

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Parts 214 and 274a**

[INS No. 1403-91]

RIN 1115-AC33

**Nonimmigrant Classes; Students, F and M Classifications**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** Section 221(a) of the Immigration Act of 1990 (IMMACT '90), provides a three-year off-campus employment program for F-1 students. To implement this off-campus employment provision and to clarify and streamline the current procedures for F-1 student employment authorization and extension of stay, the Immigration and Naturalization Service (the Service) is amending the F-1 student regulations. These regulations will improve efficiency in the administration of the student-school program.

**EFFECTIVE DATE:** October 29, 1991.

**FOR FURTHER INFORMATION CONTACT:** Pearl B. Chang, Senior Immigration Examiner, Immigration and Naturalization Service, Examinations Division, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514-3240.

**SUPPLEMENTARY INFORMATION:**

**Background**

*1. Pilot Off-campus Employment Program*

Section 221(a) of the Immigration Act of 1990 (IMMACT 90), establishes a three-year off-campus employment program for F-1 students. Beginning October 1, 1991, F-1 students in good academic standing are authorized to engage in part-time and off-campus work for a specified employer after having been in F-1 nonimmigrant student status for one year. The employer must provide the educational institution and the Secretary of Labor with an attestation that it has recruited for at least 60 days for the position and

that it will pay wages comparable to those paid to domestic workers.

The Department of Labor (DOL) will set forth regulations that employers must follow in their recruitment efforts. If the Secretary of Labor determines that an employer has falsified information on the attestation, the employer will be disqualified from employing foreign students under this program. The Congress has also directed the Commissioner to submit a report, before April 1, 1994, on the effect of the pilot program on prevailing wages and a recommendation on whether to extend the program.

## 2. The Proposed Rule.

On June 13, 1991, the Service published a proposed rule with request for comments, in the *Federal Register* at 56 FR 27211, to implement the pilot off-campus employment provision of IMMACT 90. In the same proposed rule, the Service also has clarified and simplified the current procedures for F-1 student employment authorization and extension of stay. The proposed changes were designed to reduce the paperwork burden for the students and schools, and to improve the F-1 student program's operational efficiency.

It should be noted that the proposed rule incorporated the public comments to an earlier proposed rule, 55 FR 28767 (1990), that was issued to implement the standard employment authorization application, Form I-765. The proposed rule of July 13, 1990, which was not finalized, would have required students seeking employment off-campus to apply, in person, for an employment authorization document (EAD), Form I-688B, to the Service district office having jurisdiction over them.

## Discussion of Comments

The Service received more than three hundred comments in response to the publication of the proposed rule. About two-thirds of these comments were from universities and colleges with a large foreign student population. The rest of the comments were from F-1 English language schools concerned with the language that was placed in 8 CFR 214.2(f)(6)(ii), which was interpreted as requiring that language school students be classified as M-1 nonimmigrants. While most of the commenters expressed appreciation for the Service's efforts to simplify and clarify its regulations and felt that the changes represented an overall improvement, a great number of them also had reservations about some of the proposed changes, specifically in the areas of extension of stay, employment, and practical training.

## Extension of Stay. 8 CFR 214.2(f)(7)

The Service proposed that F-1 students be admitted for duration of status. F-1 students would not be required to apply for extension of stay as long as they were maintaining status and making normal progress. Those students who failed to complete the educational program within the time period indicated on the Form I-20 A-B, Certificate of Eligibility for F-1 Student Status, would be rendered out of status and would have to apply for reinstatement.

While lauding the Service for eliminating the cumbersome extension of stay requirements, the commenters overwhelmingly protested the reinstatement requirement. They said it would be difficult to predict an accurate completion date for students since delays were frequently caused by unforeseen circumstances. The commenters argued that the reinstatement requirement penalized students for delays that they could not control. Therefore, as an alternative, many commenters recommended that the schools be allowed to approve program extensions for students who have continually maintained status and simply notify the Service of their decisions. They recommended that program extensions be limited to in-status students who were certified by the designated school official (DSO) to have legitimate academic or medical reasons for a delay, such as changes of major or research topics, unexpected research problems, or documented illnesses. The recommended notification procedure would require that a new Form I-20 A-B showing a new completion date and a certification by the DSO on Form I-538 be forwarded to the Service's data processing center in London, Kentucky. Delays caused by academic probation or suspension would not be acceptable excuses for program extension.

The Service agrees that the notification procedure is a reasonable alternative to reinstatement. With the DSOs screening out ineligible students, the Service is satisfied that the purposes of extension of stay can be effectively met through the notification procedure. The Service adopted this suggestion in the final rule and revised 8 CFR 214.2(f)(7) accordingly. The new provisions for extension of stay are applicable to all F-1 students as of October 1, 1991, regardless of their initial admission dates.

## On-campus Employment. 8 CFR 214.2(f)(9)(i)

### 1. Education Affiliation by Contract

Most commenters supported the Service's proposal to expand the definition of "on-campus" to include off-campus locations that are educationally affiliated with the established curriculum. A large number of commenters requested that the definition should be further modified to include contract-based educational affiliations. They pointed out that many professors have contract-based research grants which are not payable through the educational institutions. Including this type of "contractually-based educational affiliation" would enable graduate students to conduct research under the supervision of their professors.

Noting the similarity in the above described employment and a graduate research assistantship, the Service adopted this suggestion. However, to prevent abuses of the on-campus employment program, the Service will continue to require that employment pursuant to a contract-based educational affiliation be an integral part of the student's educational program and be commensurate with the level of study.

### 2. On-campus Employment Based on Financial Aid

In the proposed rule, the Service deleted from 8 CFR 214.2(f)(9)(i) the language: "On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study." Several commenters maintained that the deletion of this language would blur the distinction between academic employment and employment for purely economic reasons. Other commenters stated that the deletion would preclude a scholarship student from engaging in additional employment on campus.

Both groups of commenters have misunderstood the purpose of the deleted language. That language was not intended to ensure additional on-campus employment opportunities for students on scholarships nor to create different categories of on-campus employment. Rather, the language was deleted to clarify that students who are assigned teaching or research responsibilities pursuant to the terms of a scholarship or fellowship may carry a reduced course load. For example, a student enrolled in a Master's program is normally required to carry nine semester hours. However, it is a

common practice among educational institutions to restrict students awarded teaching or research assistantships to six semester hours. The Service deleted the referenced language from this paragraph because it was confusing. In the final rule, the Service placed the referenced language in 8 CFR 214.2(f)(6)(iii), under the heading "Reduced course load," to clarify the point.

### 3. *Employment With On-campus Commercial Firms*

Several commenters urged the Service to continue the current policy of requiring that on-campus employment not displace United States residents, and to classify employment with on-site commercial firms which do not provide direct student services as off-campus employment. The Service concurs and has amended the final rule accordingly.

### 4. *On-campus Employment Between Two Educational Programs*

A number of commenters urged the Service to provide for continued on-campus employment during summer vacation for transfer students or graduating students who are in transition between two degree programs. The Service accommodated these requests and revised the eighth sentence in 8 CFR 214.2(f)(9)(i) to read:

"A student who has been issued a Form I-20 A-B to begin a new program in accordance with the provision of 8 CFR 214.3(k) and who intends to enroll for the next regular academic year, term or session at the institution which issued the Form I-20 A-B may continue on-campus employment incident to status. Otherwise, an F-1 student may not engage in on-campus employment after completing a course of study, except employment for practical training as authorized under paragraph (f)(10) of this section."

### **Pilot Off-campus Employment Program. 8 CFR 214.2(9)(ii)**

#### 1. *General Reaction*

The commenters generally reacted favorably to the proposed implementing regulation for the pilot program. However, many were concerned that the documentation and recruitment requirements would discourage small businesses from hiring F-1 students. Therefore, they questioned the effectiveness of the pilot program. They wanted the Service to eliminate the attestation requirement or, at the very least, shorten the required recruitment period.

The attestation and the 60-day recruitment are both statutory requirements which can only be amended through further legislative action. The Commissioner is directed by

Congress to submit, before April 1, 1994, a report on the impact of this pilot program on the wages of domestic workers and a recommendation regarding extensions beyond October 1, 1994. The Service has always supported part-time student employment as long as it does not depress domestic wages or displace United States residents. The Service will contract a study of the impact of the pilot program prior to making the report to Congress in 1994.

#### 2. *One Year In-status Requirement*

Almost all of the commenters argued for a modification of the Service's interpretation of the one-year off-campus employment prohibition. They requested that the statutory language "one full year" be interpreted to mean one full academic year (nine consecutive months) to allow better utilization of the pilot program by students and employers alike. Since such a change is consistent with the Congressional intent to benefit American employers while allowing foreign students with economic needs to work, the Service complied.

#### 3. *DSO's Authorization for Off-campus Employment*

The statute provided that good academic standing be a prerequisite for employment authorization under the pilot program. Those authorized to work must maintain good academic standing at all times. To enable the DSOs to monitor the students' academic standings more easily, the final rule provides that DSOs authorize off-campus employment in renewable segments of up to one year for the duration of a valid labor attestation.

When a student transfers to a new school, the DSO at the new school may not renew an off-campus employment authorization unless either a copy of the original attestation or a new attestation is received. The DSO's endorsement on I-20 ID shall read "part-time employment (not to exceed 20 hours a week when school is in session) authorized with (name of employer) at (location) from (date) to (date)." To assist with the data collection necessary for the program status report to Congress in 1994, the DSOs must notify the Service's data processing center of each off-campus employment authorization on a Form I-538, Certification by Designated Schools Official.

#### 4. *Monitoring Responsibilities*

The Service was asked by several DSOs to clarify their monitoring responsibilities. DSOs are not responsible for monitoring a student's authorized off-campus employment

beyond verifying that the student is maintaining good academic standing. Students authorized to work under the pilot program are limited to part-time employment not to exceed 20 hours a week when school is in session. Employers who violate these terms are subject to penalties under the employer sanctions regulations under 8 CFR part 274a.

#### 5. *Consolidation of Economic Necessity Employment, Pre-completion Practical Training, and the Pilot Off-campus Employment Program*

The commenters criticized the proposed regulations as replacing the existing employment provisions for economic necessity with the pilot off-campus employment program. Some commenters argued that the pilot off-campus employment program would not adequately provide for students who had unforeseen economic needs. These commenters speculated that employers would be reluctant to file the labor-and-wage attestation. They feared that the attestation requirement would severely curtail the student's opportunity for needed employment.

The F-1 student employment program in the final rule represents a careful balance between the Service's desire to allow foreign students every opportunity to further their educational objectives in this country and the need to avoid adversely affecting the domestic labor market. The House Judiciary Committee report on HR 4300 (the House version of IMMACT 90), H.R. No. 101-723, 101st Cong., 2d Sess. at 67, reprinted in 1990 U.S. Code Cong. & Admin. News 6710, demonstrated a clear Congressional concern about the Service's plan to expand student employment authorization without any built-in labor safeguards. The proposed student employment provisions are designed to carry out Congress' intent to expand opportunities for both business and students while adequately protecting domestic workers. Under the final rule, F-1 students regardless of economic needs will have numerous opportunities for employment. An F-1 student may work on-campus upon enrollment as a full-time student, or may work off-campus after having been in status for one academic year (nine months) without having to prove economic necessity.

Commenters also criticized that the proposed rule eliminated the pre-completion practical training category. These commenters argued that the pilot off-campus employment program would not adequately provide for students who wished to gain practical training

experience concurrent with their course work. They recommend broadening the definition of curricular practical training to include any employment which relates to the student's area of academic study. Under the final rule, an F-1 student may participate in any required curricular practical training as soon as school begins or in any elective curricular practical training after having been in status for nine months. An F-1 student eligible for practical training is entitled to one full year of practical training after completing the educational program if he or she has had less than one full year of curricular practical training.

In summary, after carefully considering the comments, the Service amended the proposed procedures as follows: The Service reduced the one-year bar to off-campus employment to nine months (one academic year); expanded the definition for on-campus employment; exempted the nine-month in-status requirement for required curricular practical training; and lifted the ceiling for both required and optional curricular practical training to facilitate academically-oriented employment. The Service also streamlined student employment procedures to allow the DSOs to authorize employment for students in all situations except post-completion practical training. With all these employment opportunities for F-1 students, the Service is confident that the final rule adequately provides for F-1 students who need to or want to work without the risk of displacing United States resident workers.

#### **Curricular Practical Training, 8 CFR 214.2(f)(10)(i).**

The proposed rule defined curricular practical training as one where students are awarded academic credits. Many commenters pointed out that certain types of educational programs, such as hotel management, nursing, law, engineering, and teaching, routinely require their students to undertake non-credit internships. Students are often not remunerated for their participation in these training programs. Some commenters urged the Service to broaden the definition of curricular practical training to include these types of non-credit training programs that are an integral part of an established curriculum. Other commenters suggested even broader definitions that would include unsponsored employment directly related to the student's area of study.

Although the Service disagrees that unsponsored, optional employment should be categorized as curricular

practical training, the Service is persuaded that required non-credit internships are part of the established curriculum. The final definition of curricular practical training, therefore, includes required noncredit internships or practicum.

On a related matter, a large group of commenters pleaded for an exception to the nine-month in status requirement for practical training for certain graduate students. They stated that many graduate students are enrolled in programs which require immediate participation in internships. They maintained that the nine-month in status requirement interferes with the students' academic programs. The Service concurs and provides in the final rule, 8 CFR 214.2(f)(10)(i), for exceptions for compelling circumstances.

#### **Post-completion Practical Training, 8 CFR 214.2(f)(10)(ii).**

##### *1. A Single Period of Post-completion Practical Training*

Public comments on the Service's proposal to adjudicate post-completion practical training in one application were divided. A number of commenters stated that students should be given the option to split post-completion practical training into two six-month segments. Since the proposed rule did not provide summer employment for graduating students who plan to begin a new degree program in the fall, these commenters argued that splitting post-completion practical training would enable these students to work during the summer vacation.

Post-completion practical training is intended to prepare students for careers in their home countries, not to serve as a source of income to help bridge educational programs. Splitting post-completion practical training into two segments would undermine the intended purpose of the program and complicate the adjudication process. Further, the final rule reduces the bar to employment from one full year to one full academic year (9 months) in order to enable students seeking summer employment to work under the new pilot off-campus employment program. The Service is not persuaded that post-completion practical training should be split into two shorter segments.

##### *2. Employment Authorization for Post-Completion Practical Training*

A number of commenters contended that post-completion practical training is an extension of the educational curriculum, and should be authorized by the DSOs. They also cited lengthy adjudication as another reason why

students should be authorized employment for post-completion practical training incident to status by the DSOs, and thereby be exempted from the EAD requirement.

While the Service recognizes the legitimate concern about lengthy adjudication (see the separate discussion on that issue below), it disagrees with the assertion that educational institutions should have the authority to grant post-completion practical training. Educational institutions play only a limited role in securing employment for students for post-completion practical training purposes. Students who wish to engage in post-completion practical training must seek employment in the open market. This employment is unstructured and unmonitored by the schools, which have neither control over nor responsibility for the employers. Therefore, the Service is not persuaded that post-completion practical training is an extension of the educational curriculum or that it should be authorized by the schools. Accordingly, the Service is maintaining its authority for employment authorization and EAD issuance for post-completion practical training.

Finally, many commenters suggested as an alternative that F-1 students be allowed to accept employment on the recommendation of the DSO, but be required to obtain an EAD from the Service within thirty days of beginning employment with an employer's letter. This approach is not workable for two reasons: (1) The student may not accept employment without the Service's approval and (2) employers are required by regulation under 8 CFR part 274a to verify the work eligibility of their employees at the time of hire and to complete a Form I-9, Employment Eligibility Verification Form, within three business days of the hire.

##### *3. EAD for F-1 Students*

Fearing that the perceived hardship associated with the acquisition of an EAD would discourage foreign students from seeking practical training, many commenters maintained that EADs were not necessary for F-1 students because employers could be educated to recognize and accept the DSOs' authorization on I-20 ID Copies. The findings of a recent GAO study on the subject do not support this argument.

The GAO study asserted a widespread pattern of discrimination linked directly to the implementation of employer sanctions. According to GAO, confusion among employers resulting from the multiplicity of different

employment authorization documents was unintentionally leading to discrimination against foreign looking or sounding workers.

To reduce the burden for employers, the Service implemented changes that will essentially reduce to two the number of Service-issued work authorization documents for aliens eligible to seek employment in the open market—the standardized Alien Registration Card, Form I-551, for immigrants and the EAD for nonimmigrants. It is in this context that students are required to apply for a Service issued EAD.

#### 4. Timely Processing

Many of the objections to the EAD were prompted by concern about the Service's ability to adjudicate the applications in a timely manner. Almost all of the commenters questioned whether the Service has adequate staff to handle the additional EAD workload. Most believed that the Service's intention to give preferential handling to F-1 student applications could not "alleviate the inevitable processing crunch that would accompany the proposed rule change." They urged that additional personnel be hired to ensure speedy processing. Several commenters called for "up-front" processing.

Recognizing that speedy processing is the key to the successful implementation of the EAD project, the Service has requested additional staff positions to handle the expected increase in workload. Each field office has already been allocated additional positions in proportion to the projected work volume.

The Service has already equipped its field offices, including all of the major airports and land border ports, with an EAD issuing capability. All of these offices have been instructed to make special arrangements with the local educational communities to expedite the processing of student applications. Where feasible, field offices are encouraged to schedule up-front adjudication for student EAD issuance.

By hiring additional staff, streamlining the student employment authorization process, and giving students more flexibility in selecting the time and location for EAD applications, the Service will be able to implement the EAD efficiently for student practical training.

#### 5. Filing of the Application

To give students the flexibility of selecting a suitable time for filing EAD applications, the Service has decided to expand the filing period from the proposed 90 days to 120 days. An F-1

student may file an application for an EAD with the Service office having jurisdiction over his or her place of residence in the 120-day period beginning 90 days before and ending 30 days after the date of graduation. The Service will adjudicate the application and issue an EAD for the maximum 12 months. The EAD will not take effect before the student completes the course of study and will terminate, in any event, no later than 14 months from the date of graduation.

#### 6. Conversion to EAD

Employment authorizations granted on I-20 ID (Student) Copies prior to October 1, 1991, will remain valid until they expire. If F-1 students granted only the first-period of post-completion practical training by the DSO before October 1, 1991, wish to continue employment for the second six-month period, they must apply to the Service for authorization under the new procedure. Those who choose before October 1, 1991, to split the two periods of post-completion practical training will be required to apply to the Service for the remaining six-months upon completion of a new course of study. (The application on Form I-765 must be supported by a statement to that effect from the DSO.) Students applying after October 1, 1991, will not be allowed to split post-completion practical training into two periods.

#### Other Issues

##### 1. Employment During Pendency of Reinstatement. 8 CFR 214.2(f)(16).

Some commenters objected to the deletion of the provision for continued employment on campus during the pendency of a request for reinstatement. They urged a retention of that provision to ease possible financial hardship on students.

On-campus employment is an immigration benefit which is only available to students who remain in lawful status. Students with a pending reinstatement request are out of status and ineligible for nonimmigrant benefits. Hiring students who are no longer maintaining status would subject the educational institutions to sanctions under the Immigration Reform and Control Act (IRCA) of 1986. The Service therefore did not comply with this request.

##### 2. Students Returning From a Temporary Trip Abroad to Resume Authorized Post-completion Practical Training. 8 CFR 214.2(f)(13)(ii).

It has come to the Service's attention that the last sentence of paragraph

214.2(f)(13)(ii) gave the wrong impression that students returning to the United States to resume authorized employment after a temporary trip abroad could be admitted on the basis of an unexpired EAD alone. The provisions for an F-1 student seeking reentry after a period of temporary absence from the United States as contained in § 214.2(f)(4) clearly require the student to present either a new Form I-20 A-B or an I-20 ID endorsed for reentry by the DSO. To correct this misconception, the final rule provides that a returning F-1 student present an unexpired EAD and an I-20 ID endorsed by the DSO within the last six months for reentry.

##### 3. Original I-20 ID for Dependent Travel.

Several commenters questioned the need for the F-1 student's I-20 ID or a new Form I-20 A-B for F-2 dependents who follow to join the student as contained in § CFR 214.2(f)(3). They said that photocopies of the original I-20 ID should be acceptable. Both the Service and the Department of State have an outstanding policy of not accepting reproduced copies of any documents which are used as the basis for issuing visas or granting entries into the United States. However, a reproduced copy of the F-1 student's original I-20 ID is acceptable if the copy bears an original endorsement for reentry by the DSO.

##### 4. F-1 Classification for Language Schools.

The Service inadvertently included language instruction in the last sentence of 8 CFR 214.2(f)(6)(ii) when clarifying that provisions of 8 CFR 214.2(f)(6) are not applicable to schools which devote themselves primarily to vocational or business instruction. This oversight resulted in more than one hundred protest letters from English language schools with an F-1 classification. The Service never intended to reclassify English language schools, as they are statutorily classified as F-1 schools. The reference to language instruction was deleted from 8 CFR 214.2(f)(6)(ii).

#### Notice to Public

Copies of the final rule, the revised Form I-538, and a notice to employers, which can be shown to employers by the students, are being distributed to all schools authorized to accept foreign students. The information packet will be sent to all Service-approved schools.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse

economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation are being submitted to OMB for review and approval under the provisions of the Paperwork Reduction Act. Control numbers for previously approved information collections are contained in 8 CFR 299.5 Display of Control Numbers.

#### List of Subjects

##### 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegations (government agencies), Employment, Organization and functions (government agencies), Passports and visas.

##### 8 CFR Part 274a

Administrative practice and procedures, Aliens.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

#### PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1184, 1186a, 1187, and 8 CFR part 2.

2. Section 214.2 is amended by revising paragraph (f), the first two sentences of the introductory text of paragraph (m)(14)(ii), and paragraph (m)(14)(iii) to read as follows:

##### § 214.2 Special requirements for admission, extension, and maintenance of status.

(f) *Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs*—(1) *Admission of student*—(i) *Eligibility for admission*. A nonimmigrant student and his or her accompanying spouse and minor children may be admitted into the United States in F-1 and F-2 classifications for duration of status under section 101(a)(15)(F)(i) of the Act, if the student:

(A) Presents a properly completed Form I-20 A-B/I-20 ID, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, which is issued by a school approved by the Service for attendance by foreign students;

(B) Has documentary evidence of financial support in the amount indicated on the Form I-20 A-B/I-20 ID; and

(C) For students seeking initial admission only, intends to attend the school specified in the student's visa except where the student is exempt from the requirement for a visa, in which case the student must intend to attend the school indicated on the Form I-20 A-B/I-20 ID.

(ii) *Disposition of Form I-20 A-B/I-20 ID*. Form I-20 A-B/I-20 ID contains two copies, the I-20 School Copy and the I-20 ID (Student) Copy. For purposes of clarity, the entire Form I-20 A-B/I-20 ID shall be referred to as Form I-20 A-B and the I-20 ID (Student) Copy shall be referred to as the I-20 ID. When an F-1 student applies for admission with a complete Form I-20 A-B, the inspecting officer shall:

(A) Transcribe the student's admission number from Form I-94 onto his or her Form I-20 A-B (for students seeking initial admission only);

(B) Endorse all copies of the Form I-20 A-B;

(C) Return the I-20 ID to the student; and

(D) Forward the I-20 School Copy to the Service's processing center for data entry. (The school copy of Form I-20 A-B will be sent back to the school as a notice of the student's admission after data entry.)

(2) *I-20 ID*. An F-1 student is expected to safekeep the initial I-20 ID bearing the admission number and any subsequent copies which have been issued to him or her. Should the student lose his or her current I-20 ID, a replacement copy bearing the same information as the lost copy, including any endorsement for employment and notations, may be issued by the designated school official (DSO) as defined in 8 CFR 214.3(l)(1)(i).

(3) *Spouse and minor children following to join student*. The spouse and minor children following to join an F-1 student are eligible for admission to the United States if the F-1 student is, or will be within sixty days, enrolled in a full course of study or, if the student is engaged in approved practical training following completion of studies. The eligible spouse and minor children of an F-1 student may be admitted in F-2 status if they present the F-1 student's current I-20 ID with proper endorsement by the DSO. A new Form I-20 A-B is required where there has been any substantive change in the information on the student's current I-20 ID.

(4) *Temporary absence*. An F-1 student returning to the United States from a temporary absence of five

months or less may be readmitted for attendance at a Service-approved educational institution, if the student presents:

(i) A current I-20 ID properly endorsed by the DSO for reentry if there is no substantive change on the most recent I-20 ID; or

(ii) A new Form I-20 A-B if there has been any substantive change in the information on the student's most recent I-20 ID, such as in the case of a student who has changed the major area of study, who intends to transfer to another Service-approved institution, or who has advanced to a higher level of study.

(5) *Duration of status*—(i) *General*. Duration of status is defined as the time during which an F-1 student is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus sixty days to prepare for departure from the United States. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of study.

(ii) *Change in educational levels*. An F-1 student who continues from one educational level to another is considered to be maintaining status, provided that the transition to the new educational level is accomplished according to transfer procedures outlined in paragraph (f)(8) of this section.

(iii) *Annual vacation*. An F-1 student at an academic institution is considered to be in status during the annual (or summer) vacation if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer is considered to be in status during that vacation, if the student has completed the equivalent of an academic year prior to taking the vacation.

(iv) *Illness or medical conditions*. A student who is compelled by illness or other medical conditions to interrupt or reduce a full course of study is considered to be in status during the illness or other medical condition. The student must resume a full course of study upon recovery.

(6) *Full course of study*—(i) *General*. Successful completion of the full course of study must lead to the attainment of a specific educational or professional objective. A "full course of study" as required by section 101(a)(15)(F)(i) of the Act means:



(A) Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a DSO as a full course of study;

(B) Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;

(C) Study in a post-secondary language, liberal arts, fine arts or other non-vocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within 8 CFR 214.3(c) (1) or (2), and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

(D) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at least twenty-two clock hours a week if the dominant part of the course of study consists of laboratory work; or

(E) Study in a primary school or academic high school curriculum certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

(ii) *Institution of higher learning.* For purposes of this paragraph, a college or university is an institution of higher learning which awards recognized associate, bachelor's, master's, doctorate, or professional degrees. Schools which devote themselves exclusively or primarily to vocational, business, or language instruction are not included in the category of colleges or universities. Vocational or business schools which are classifiable as M-1

schools are provided for by regulations under 8 CFR 214.2(m).

(iii) *Reduced course load.* The designated school official may advise an F-1 student to engage in less than a full course of study due to initial difficulties with the English language or reading requirements, unfamiliarity with American teaching methods, or improper course level placement. An F-1 student authorized to reduce course load by the DSO in accordance with the provisions of this paragraph is considered to be maintaining status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

(7) *Extension of stay—(i) General.* An F-1 student is admitted for duration of status. The student is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completing his or her educational objective. An F-1 student who is unable to complete a full course of study in a timely manner must apply, in a 30-day period before the completion date on the Form I-20 A-B, to the DSO for a program extension pursuant to paragraph (f)(7)(iii) of this section.

(ii) *Completion date on Form I-20 A-B.* When determining the program completion date on Form I-20 A-B, the DSO should make a reasonable estimate based on the time an average foreign student would need to complete a similar program in the same discipline. A grace period of no more than one year may be added onto the DSO's estimate.

(iii) *Program extension for students in lawful status.* An F-1 student who is unable to meet the program completion date on the Form I-20 A-B may be granted a program extension by the school, if the DSO certifies on a Form I-538 that the student has continually maintained status and that the delays are caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses. Delays caused by academic probation or suspension are not acceptable reasons for program extension. The DSO must notify the Service within 30 days of any approved program extensions by forwarding to the Service data processing center a certification on Form I-538 and the top page of a new Form I-20 A-B showing a new program completion date.

(iv) *Failure to complete the educational program in a timely manner.* An F-1 student who is unable to complete the educational program within the time period written on the

Form I-20 A-B and who is ineligible for program extension pursuant to paragraph (f)(7)(iii) of this section is considered to be out of status. Under these circumstances, the student must apply for reinstatement under the Provisions of paragraph (f)(16) of this section.

(8) *School transfer—(i) Eligibility.* An F-1 student who is maintaining status may transfer to another Service-approved school by following the notification procedure prescribed in paragraph (f)(8)(ii) of this section. An F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school-transfer and must apply for reinstatement under the provisions of paragraph (f)(16) of this section.

(ii) *Transfer procedure.* To transfer schools, an F-1 student must first notify the school he or she is attending of the intent to transfer, then obtain a Form I-20 A-B, issued in accordance with the provisions of 8 CFR 214.3(k), from the school to which he or she intends to transfer. The transfer will be effected only if the F-1 student completes the Student Certification portion of the Form I-20 A-B and returns the form to a designated school official on campus within 15 days of beginning attendance at the new school.

(iii) *Notification.* Upon receipt of the student's Form I-20 A-B, the DSO must:

(A) Note "transfer completed on (date)" on the student's I-20 ID in the space provided for the DSO's remarks, thereby acknowledging the student's attendance;

(B) Return the I-20 ID to the student;

(C) Submit the I-20 School copy to the Service's Data Processing Center within 30 days of receipt from the student; and

(D) Forward a photocopy of the Form I-20 A-B School Copy to the school from which the student transferred.

(9) *Employment—(i) On-campus employment.* On-campus employment must either be performed on the school's premises, (including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location which is educationally affiliated with the school. Employment with on-site commercial firms, such as a construction company building a school building, which do not provide direct student services is not deemed on-campus employment for the purposes of this paragraph. In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum or related to contractually funded research

projects at the post-graduate level. In any event, the employment must be an integral part of the student's educational program. Employment authorized under this paragraph must not exceed twenty hours a week while school is in session. An F-1 student may, however, work on campus full-time when school is not in session or during the annual vacation. A student who has been issued a Form I-20 A-B to begin a new program in accordance with the provision of 8 CFR 214.3(k) and who intends to enroll for the next regular academic year, term, or session at the institution which issued the Form I-20 A-B may continue on-campus employment incident to status. Otherwise, an F-1 student may not engage in on-campus employment after completing a course of study, except employment for practical training as authorized under paragraph (f)(10) of this section. An F-1 student may engage in any on-campus employment authorized under this paragraph which will not displace United States residents.

(ii) *Off-campus employment*—(A) *General.* An F-1 student is authorized to work off-campus on a part-time basis after having been in F-1 status for one full academic year provided that he or she is in good academic standing as determined by the DSO and that the employer has filed a labor-and-wage attestation as required by section 221(a)(2) of Public Law 101-649. Part-time off-campus employment authorized under this section is limited to no more than twenty hours a week when school is in session. A student who is granted off-campus employment authorization may work full-time during holidays or school vacation. A student may accept off-campus employment only after his or her I-20 ID has been endorsed to that effect by the DSO. The employment authorization is terminated whenever the student fails to maintain status.

(B) *Procedure for off-campus employment authorization.* An eligible F-1 student may make a request for off-campus employment authorization to the DSO on Form I-538, Certification by Designated School Official. By certifying on Form I-538 that the student is eligible for off-campus employment in accordance with paragraph (f)(9)(ii) of this section, the DSO may authorize off-campus employment in one year intervals for the duration of a valid attestation as determined by the Secretary of Labor. The off-campus employment authorization may be renewed by the DSO only if the student is maintaining status and good academic standing. The DSO must notify the Service of each off-campus employment

authorization by forwarding to the Service data processing center a Form I-538 with a copy of the labor attestation attached. The endorsement on the student's I-20 ID should read "part-time employment with (name of employer) at (location) authorized from (date) to (date)." Off-campus employment authorized by the DSO under this provision is incident to the student's status and employer-specific and, therefore, exempt from the EAD requirement.

(C) *Attestation.* Section 221(a) of Public Law 101-649 provides that an F-1 student may be authorized to accept employment off-campus only if the prospective employer provides the educational institution with an attestation following the procedures set forth by the Secretary of Labor, 20 CFR part 655, subparts J and K. The employer must attest to the effect that it has actively recruited domestic labor for at least 60 days for the position and will accord the student worker the same wages and working conditions as domestic workers similarly employed.

(iii) *Internship with an international organization.* A bona fide F-1 student who has been offered employment by a recognized international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) must apply for employment authorization, in person, to the Service office having jurisdiction over his or her place of residence. A student seeking employment authorization under this provision is required to present a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship, an I-20 ID endorsed for reentry by the DSO within the last 30 days, and a completed Form I-765, Application for Employment Authorization, with the fee required in 8 CFR 103.7(b)(1).

(10) *Practical training.* Practical training is available to F-1 students who have been lawfully enrolled on a full-time basis in a Service-approved college, university, conservatory, or seminary for at least nine consecutive months. Students in English language training programs are ineligible for practical training. An eligible F-1 student may request employment authorization for practical training in a position which is directly related to his or her major area of study. There are two types of practical training available:

(i) *Curricular practical training programs.* An F-1 student may be authorized, by the DSO, to participate in a curricular practical training program which is an integral part of an

established curriculum. Curricular practical training is defined to be alternate work/study, internship, cooperative education, or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full-time curricular practical training are ineligible for post-completion practical training. Exceptions to the nine-month in status requirement are provided for students enrolled in graduate studies which require immediate participation in curricular practical training. A request for authorization for curricular practical training must be made to the DSO on Form I-538. Upon approving the request for authorization, the DSO shall:

(A) Certify the Form I-538 and send the form to the Service's data processing center;

(B) Endorse the student's I-20 ID with "full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)"; and

(C) Sign and date the I-20 ID before returning it to the student. A student may begin curricular practical training only after receiving his or her I-20 ID with the DSO endorsement.

(ii) *Post-completion practical training*—(A) *General.* An F-1 student may apply to the Service for authorization for temporary employment for practical training after completion of studies. Post-completion practical training generally will be authorized on recommendation of the DSO, whether or not the student intends to continue another full-course of study after completing the authorized practical training. Authorization for post-completion practical training may be granted for a maximum of 12 months and takes effect only after the student has completed the course of study. In any event, a student must complete practical training within a 14-month period following the completion of studies. An F-1 student may be authorized to engage in post-completion practical training only once for the duration of student status.

(B) *Request for recommendation for post-completion practical training.* A student may request recommendation for practical training during a 120-day period which begins 90 days before and ends 30 days after the completion of the course of study. A student must make the request for recommendation for post-completion practical training to the DSO on Form I-538, accompanied by his or her current I-20 ID.



(C) *Action on request for recommendation for practical training.* In making a recommendation for post-completion practical training, a designated school official must:

(1) Certify on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level;

(2) Endorse and date the I-20 ID to show that post-completion practical training in the student's major field of study is recommended beginning on (date of completion of the course of study); and

(3) Return to the student the I-20 ID and send to the Service data processing center the school certification on Form I-538.

(11) *Employment authorization.* As required by the regulations at 8 CFR 274a, an F-1 student seeking practical training (excluding curricular practical training) under paragraph (f)(10) of this section may not accept employment until he or she has been issued an Employment Authorization Document (EAD) by the Service. An F-1 student must apply for the EAD on Form I-765 at the Service office having jurisdiction over his or her place of residence during the same 120-day period when the DSOs are authorized to recommend practical training. (The application process includes a required personal appearance.) The application for employment authorization must include the following documents:

(i) A completed Form I-765, with the fee required by § 103.7(b)(1); and  
 (ii) A DSO's recommendation for practical training on I-20 ID.

(12) *Decision on application for employment authorization.* The Service shall adjudicate the Form I-765 and issue an EAD on the basis of the DSO's recommendation unless the student is found otherwise ineligible. The Service director shall notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial. The applicant may not appeal the decision.

(13) *Temporary absence from the United States of F-1 student granted employment authorization.* (i) A student returning from a temporary trip abroad with an unexpired off-campus employment authorization on his or her I-20 ID may resume employment only if the student is readmitted to attend the same school which granted the employment authorization.

(ii) An F-1 student who has an unexpired EAD issued for post-completion practical training and who is otherwise admissible may return to the United States to resume employment

after a period of temporary absence. The EAD must be used in combination with an I-20 ID endorsed for reentry by the DSO within the last six months.

(14) *Effect of strike or other labor dispute.* Any employment authorization, whether or not part of an academic program, is automatically suspended upon certification by the Secretary of Labor or the Secretary's designee to the Commissioner of the Immigration and Naturalization Service or the Commissioner's designee, that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, "place of employment" means the facility or facilities where a labor dispute exists. The employer is prohibited from transferring F-1 students working at other facilities to the facility where the work stoppage is occurring.

(15) *Spouse and children of F-1 student.* The F-1 spouse and children of an F-1 student may not accept employment.

(16) *Reinstatement to student status—*

(i) *General.* A Service director may consider reinstating an F-1 student who makes a request for reinstatement on Form I-539, Application to Extend Time of Temporary Stay, accompanied by a properly completed Form I-20 A-B from the school the student is attending or intends to attend, if the student:

(A) Establishes to the satisfaction of the Service director that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful F-1 status would result in extreme hardship to the student;

(B) Is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20 A-B;

(C) Has not engaged in unauthorized employment; and

(D) Is not deportable on any ground other than section 241(a)(1)(B) or (C)(i) of the Act.

(ii) *Decision.* If the Service director reinstates the student, the director shall endorse Form I-20 A-B to indicate that the student has been reinstated, return the I-20 ID to the student, and forward the school copy of the form to the Service's processing center for data entry. If the Service director does not reinstate the student, the student may not appeal that decision.

(m) \* \* \*

(14) \* \* \*

(ii) *Application.* An M-1 student must apply for permission to accept employment for practical training on Form I-765, with the fee required by 8

CFR 103.7(b)(1), accompanied by his or her I-20 ID endorsed for practical training by the DSO. The student must submit the application to the Service office having jurisdiction over the student's place of residence. (A personal appearance is required before the application can be approved.) \* \* \*

(iii) *Duration of practical training.* When the student is authorized to engage in employment for practical training, he or she will be issued an employment authorization document. The M-1 student may not begin employment until he or she has been issued an employment authorization document by the Service. One month of employment authorization will be granted for each four months of full-time study that the M-1 student has completed. However, an M-1 student may not engage in more than six months of practical training in the aggregate. The student will not be granted employment authorization if he or she cannot complete the requested practical training within six months.

**PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; and 8 CFR part 2.

4. Section 274a.12 is amended by revising paragraphs (b)(6), (c)(3), and (c)(6) to read as follows:

**§ 274a.12 Classes of aliens authorized to accept employment.**

(b) \* \* \*

(6) A nonimmigrant (F-1) student who is in valid nonimmigrant student status and pursuant to 8 CFR 214.2(f) is seeking:

(i) On-campus employment for not more than twenty hours per week when school is in session or full-time employment when school is not in session if the student intends and is eligible to register for the next term or session. Part-time on-campus employment is authorized by the school and no specific endorsement by a school official or Service officer is necessary;

(ii) Part-time off-campus employment authorization based on an approved attestation from the employer pursuant to 8 CFR 214.2(f) and who presents an I-20 ID endorsed by the designated school official; or

(iii) Curricular practical training (internships, cooperative training programs, or work-study programs which are part of an established

curriculum) after having been enrolled full-time in a Service-approved institution for at least nine months. Curricular practical training (part-time or full-time) is authorized by the Designated School Official on the student's I-20 ID; no Service endorsement is necessary.

(c) \* \* \*

(3) A nonimmigrant (F-1) student who:

(i) Is seeking employment for purposes of post completion practical training pursuant to 8 CFR 214.2(f), provided the alien will be employed only in an occupation which is directly related to his or her area of studies and that he or she presents an I-20 ID endorsed by the designated school official; or

(ii) Has been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) and who presents a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship. The F-1 student must also present an I-20 ID endorsed by the DSO in the last 30 days;

(6) A nonimmigrant (M-1) student seeking employment for practical training pursuant to 8 CFR 214.2(m) following completion of studies. The alien may be employed only in an occupation or vocation directly related to his or her course of study as recommended by the endorsement of the designated school official on the I-20 ID;

Dated: September 10, 1991.

Gene McNary,  
Commissioner,

Immigration and Naturalization Service.

[FR Doc. 91-25975 Filed 10-28-91; 8:45 am]

BILLING CODE 4410-10-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

#### Small Business Size Standards; Chicken Egg Industry

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) is adopting as final its proposal to establish a size standard of \$7 million in average annual receipts for the Chicken Egg industry, Standard Industrial Classification (SIC) code 0252. This action is being taken to better define a small business in this

industry. Its intent is to indicate which firms in the industry are eligible for SBA assistance as small businesses.

**EFFECTIVE DATE:** November 29, 1991.

**FOR FURTHER INFORMATION CONTACT:** Gary M. Jackson, Size Standards Staff, Telephone: 202-205-6618.

**SUPPLEMENTARY INFORMATION:** On April 30, 1991 SBA proposed in the *Federal Register* (56 FR 19821) an increase of the size standard for the Chicken Egg industry to \$7 million from \$1 million in average annual receipts. SBA proposed this action because of concern about low small business participation in the Federal chicken egg procurement market that may be attributed, in part, to an unreasonable size standard given the structure of the industry. Only 1 to 2 percent of Federal chicken egg contracts have been awarded to small business in recent years. In view of the limited participation of small chicken egg producers in Federal procurement, SBA reexamined the appropriateness of the \$1.0 million size standard.

SBA received two comments on the proposal. The respondents supported the proposed size standard. Both respondents, small business chicken egg dealers, cited that the \$7.0 million size standard would increase opportunities in the Federal market for small egg producers. One commenter added that a higher standard of \$10 million to \$15 million would be appropriate, but provided no justification to support a higher standard. Accordingly, SBA believes its proposed size standard of \$7.0 million is the most appropriate standard for this industry and adopts the proposed rule as a final rule.

In reviewing this size standard SBA examined a number of factors related to the structure of the chicken egg industry. These are: concentration of industry output by the largest producers, average firm size, the distribution of firms by size within the industry, and small business participation in the Federal market. These factors, as they relate to the chicken egg industry, were also compared to other sectors and their size standards. The proposed rule included an analysis of each of these factors. Below is a brief summary of the most significant points.

SBA found that the egg industry size standard was unreasonably low compared to the relationship between industry structure and the size standard prevailing for other industries. About one-half of industry firms were considered small under the \$1.0 million size standard. These firms account for only 8 percent of industry sales. By contrast, SBA's size standards define approximately 98 percent of all firms as

small which account for 38 percent of sales. Average firm size of chicken egg producers of \$2.5 million is more than twice that of the average retail trade or services firm, \$1.3 million and \$1.2 million, respectively. However, the most common size standard for the retail trade and services industries is \$3.5 million, compared to the \$1.0 million size standard for the chicken egg industry. Supporting the argument for a higher size standard is also the observation that larger firms have increased their market share at the expense of small chicken egg producers. Larger producers (one million layers or more) have increased their market share to 56 percent of industry sales in 1987 from 36 percent in 1980. Smaller firms under the \$1.0 million size standard, equivalent to about 80,000 layers, account for only 8 percent of sales. As mentioned earlier, small chicken egg producers have obtained only a minimal share of Federal chicken egg contracts—one to 2 percent compared to a 20 percent share awarded to small business on total Federal procurement.

In choosing a \$7 million size standard, it would make the chicken egg industry's size standard more comparable to other industries in terms of its relationship between the size standard and average firm size and coverage rates. Specifically a \$7 million size standard appears to be more reasonable compared to the \$2.5 million average industry firm size. Usually a size standard is considerably larger than the average size firm in an industry. The new size standard would define as small, or cover, 93 percent of industry firms compared to 54 percent under the \$1 million standard. Thirty-seven percent of industry sales would be included under the new size standard as opposed to 8 percent under the old one. These coverage rates are more consistent with average rates prevailing under the size standards for all industries.

**Compliance With Executive Orders 12291 and 12612, Regulatory Flexibility Act and Paperwork Reduction Act (5 U.S.C. 601, et seq. and 44 U.S.C., Chapter 35)**

The SBA certifies that this proposed rule does not constitute a major rule for purposes of Executive Order 12291. This rule does not qualify as a major rule because it is not expected to have an economic impact of \$100 million or more. SBA made only 20 loans to firms in this industry for \$4.1 million in 1989, and the number of contracts set aside for small business in this industry has been only a few per year. In the