

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95-8186 Filed 4-3-95; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-144; RM-8554]

Radio Broadcasting Services; Dickeyville, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266A to Dickeyville, Wisconsin, as that community's first local transmission service in response to a petition filed by James F. Munson. See 59 FR 65749, December 21, 1994. The coordinates for Channel 266A at Dickeyville are 42-37-38 and 90-35-31. With this action, this proceeding is terminated.

DATES: Effective May 12, 1995. The window period for filing applications for Channel 266A at Dickeyville, will open on May 12, 1995, and close on June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 94-144, adopted March 21, 1995, and released March 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Dickeyville, Channel 266A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-7949 Filed 4-3-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 89-459; RM-7009, RM-7260, RM-7261, RM-7263, RM-7264]

Radio Broadcasting Services; LaGrange and Rollingwood, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies an Application for Review filed by Fayette Broadcasting Corporation, licensee of Station KBUK, Channel 285A, LaGrange, Texas, directed to a staff action denying its request to substitute Channel 285C2 for Channel 285A and reallocate Channel 285C2 to Rollingwood, Texas. See 58 FR 12903, published March 8, 1993. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 4, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 776-1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 89-459, adopted March 8, 1995, and released March 28, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription service, (202) 857-3800, 2100 M Street, NW, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-8162 Filed 4-3-95; 8:45 am]

BILLING CODE 6712-01-F

GENERAL SERVICES ADMINISTRATION

Board of Contract Appeals

48 CFR Part 6101

RIN Number 3090-AF62

Rules of Procedure of the General Services Administration Board of Contract Appeals

AGENCY: Board of Contract Appeals, General Services Administration.

ACTION: Final rule.

SUMMARY: This document contains revisions to the rules of procedure of the GSA Board of Contract Appeals (Board), which will govern all proceedings before the Board. The revisions implement certain provisions of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) (FASA or Act) which have amended the Brooks Automatic Data Processing Act, under which the Board hears and decides protests of procurements involving automatic data processing (ADP) equipment, and the Contract Disputes Act of 1978, under which the Board hears and decides contract disputes. The revisions conform the Board's rules of procedure to the amendments made to its jurisdictional statutes.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Wilbur T. Miller, Chief Counsel, GSA Board of Contract Appeals, (202) 501-0891.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The General Services Administration certifies that these revisions will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

C. Effective Dates

Pursuant to Sections 10001 and 10002 of the FASA, these rules (as well as Sections 1432-1434, 1436-1438, and 2351 (c)-(d) of the Act) are applicable to all proceedings filed on or after May 5, 1995. Section 1435 of the Act shall be applicable to cost applications where

the underlying protest is filed on or after May 5, 1995.

D. Background

On December 2, 1994, the Board published a proposed rule with request for comments [59 FR 61861] containing revisions to the Board's rules of procedure. The background information accompanying the proposed rule explained that the revisions were necessitated by the amendment of the Board's jurisdictional statutes, the Contract Disputes Act of 1978 (41 U.S.C. 601-613) and the Brooks Automatic Data Processing Act (40 U.S.C. 759(f)), by the FASA. Interested persons were invited to submit comments by January 31, 1995, and the Board received comments from components of two federal agencies, two bar association groups, and one industry association. After consideration of these comments, the Board's members adopted the proposed rules, as revised, by majority vote.

The most significant changes made by the revisions to the Board's rules are highlighted in the next section of the preamble. Following that section, the preamble summarizes the more significant comments received by the Board during the comment period and indicates how these comments were addressed in preparing this final rule.

E. Highlights of Changes

Subtitle D of Title I of the FASA names and amends the Brooks Automatic Data Processing Act (40 U.S.C. 759(f)), under which the Board hears and decides protests. Subtitle D of Title II of the FASA amends the Contract Disputes Act of 1978 (41 U.S.C. 601-613), which gives the Board jurisdiction to hear and decide contract disputes. The revisions to the Board's rules contain changes necessitated by the amendment of both the Brooks Act and the Contract Disputes Act. In addition, Section 155 of the Energy Policy Act of 1992 (42 U.S.C. 8287) authorized the Board to review decisions regarding the qualification of firms to enter into energy savings contracts. The Foreword to the rules now includes a statement that, in conducting such reviews, the Board will apply the rules pertinent to protests to the extent practicable.

Definitions

A definition of "prevailing party" (§ 6101.1(b)(12)) has been added to the rules to conform to section 1435(b) of the FASA. In a protest, a "prevailing party" is one who has demonstrated that a challenged action of a Federal agency violates a statute or regulation or the

conditions of a delegation of procurement authority. Similarly, the definition of "protest" (§ 6101.1(b)(13)) has been changed to that specified in section 1438 of the Act. Finally, in order to conform to the language prescribed in section 1437 of the Act, the term "working day" (§ 6101.1(b)(16)) is now defined as any day other than a Saturday, Sunday, or "legal" (rather than "Federal") holiday.

Computing Time

Section 6101.2(c) has been revised to parallel the changes required by section 1433 of the FASA. This section provides that when a period of time prescribed or allowed in the rules is less than 11 days, intervening Saturdays, Sundays, and legal holidays are not counted; in other words, only working days are counted. When the time period is 11 days or more, intervening Saturdays, Sundays, and legal holidays are counted, i.e., all calendar days are counted. The revision states that the only exceptions are the 5-calendar-day period after a debriefing date and the 10-calendar-day period after contract award for filing a protest that requests a suspension hearing.

Three other sections relating to timing have also been revised: (1) Section 6101.19(a)(2) provides that a protest which requests a suspension hearing must be filed no later than 10 calendar days after contract award or 5 calendar days after the debriefing date; (2) § 6101.19(a)(3) provides that the hearing on the merits of a protest shall commence no later than 35 calendar days after the protest is filed (rather than 25 working days); (3) § 6101.29(b) provides that a decision on the merits of a protest shall be issued no later than 65 calendar days after the protest is filed (rather than 45 working days).

Small Claims and Accelerated Procedures

The small claims dollar threshold has been changed from \$10,000 to \$50,000 (§ 6101.13(a)), and the accelerated procedure dollar threshold has been changed from \$50,000 to \$100,000 (§ 6101.14(a)). These changes implement the amendments to sections 9(a) and 8(f) of the Contract Disputes Act of 1978 (41 U.S.C. §§ 608(a), 607(f)) by subsections 2351 (c) and (d) of the FASA.

Dismissals; Sanctions

Section 6101.28(a)(2) has been added to conform to the language specified in Section 1434 of the FASA. The proposed rule provides that the Board may dismiss a protest that it determines is frivolous; has been brought or pursued in bad faith; or does not state on its face a valid basis for protest.

Section 6101.18(b) has been amended to provide that the Board may impose appropriate sanctions if it expressly finds that (1) a protest or portion of a protest is frivolous or has been brought or pursued in bad faith; or (2) any person has willfully abused the Board's process during the course of a protest.

Suspension Hearing and Decision

Section 6101.19(a)(2) has been amended to change the timing of a protest suspension hearing in order to conform to Section 1433(a)(2) of the FASA. A protest suspension hearing is one in which the Board determines whether to suspend the Administrator's procurement authority or delegation of procurement authority until the protest can be decided. An interested party may request a suspension hearing if the underlying protest is filed by the later of (1) the tenth calendar day after the date of contract award or (2) the fifth calendar day after the debriefing date for any debriefing that is requested and required. The Board must hold the suspension hearing within 5 working days after the date the protest was filed, or in the case of a request for debriefing, within 5 working days after the later of the date of the filing of the protest or the date of the debriefing.

Section 6101.19(d) (Suspension decision) has been amended to include language specified by Section 1433(a)(1)(C) of the FASA. If a contract award has not been made, a suspension shall not preclude the Federal agency whose procurement authority has been suspended from continuing the procurement process up to but not including contract award, unless the Board determines such action is not in the best interests of the United States.

Settlement Agreements

A new paragraph has been added to Section 6101.28 (Dismissals) which incorporates the language specified by Section 1436 of the FASA. Section 6101.28(d) provides that any settlement agreement that dismisses a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the Board and made part of the public record, subject to any protective order considered appropriate by the Board. If a Federal agency is a party to the agreement, the submission of the agreement to the Board must include a memorandum signed by the contracting officer that describes in detail the procurement, the grounds for protest, the Government's position regarding those grounds, the terms of the settlement, and the agency's position regarding the propriety of the

award or proposed award of the contract at issue in the protest.

Award of Costs

Section 6101.35(a) has been amended to conform to Section 1435 of the FASA by stating that an appropriate party applying for an award of costs must also be a prevailing party. Also, two additions are made to the application requirements in § 6101.35(c): (1) An applicant asserting that it is a qualifying small business must provide evidence of that fact in its cost application; and (2) an applicant requesting reimbursement of attorney fees that exceed the statutory rate must explain why such fees are justified. Finally, § 6101.35(d) now provides that if the Government contends that fees for consultants or expert witnesses for which reimbursement is sought exceed the highest rate of compensation for expert witnesses paid by the agency (in appeals), or by the Federal Government (in protests), then it must include evidence of the relevant highest rate in the answer filed in response to the cost application.

F. Summary of Comments

The Board received written comments from five commentators: components of two federal agencies, two bar association groups, and one industry association. The majority of the comments focused on five of the rules. The Board carefully considered each comment and adopted some of the suggestions made. The more significant comments are discussed below in a section-by-section format.

Section 6101.2 (Time: Enlargement; Computation)

One commentator noted that the Board's proposed rules retained working days as the basis for calculating time periods that are less than 11 days, and suggested that using calendar days to calculate all time periods would be less confusing and more consistent with the FASA, which defines all time limits in calendar days. The Board last changed the method of calculating short time deadlines on January 3, 1994, when the Board rules were amended. At the same time, to reduce confusion, the rules were amended to specify working days or calendar days for each time frame given. Since then, litigants have become familiar with the current system of computing short time frames, and the Board determined that the advantages of leaving that system in place outweighed any advantage to be gained by making the suggested change.

Section 6101.18 (Sanctions and Other Proceedings)

As required by the FASA, Section 6106.18 has been amended to provide that the Board may impose appropriate sanctions if it finds that a protest is frivolous or has been brought or pursued in bad faith, or that a person has willfully abused the Board's process during a protest. One commentator suggested that it would be useful for the Board to provide advice in this summary as to the type of conduct that it is likely to view as frivolous or in bad faith. After careful consideration, the Board determined that such matters are more appropriately decided in the context of specific cases. The Board will look to the decisions of the United States Court of Appeals for the Federal Circuit and other case law in determining appropriate sanctions.

Section 6101.19 (Hearings; Scheduling; Notice; Unexcused Absences; Suspension Decision)

In order to conform to Section 1433(a)(2) of the FASA, the Board amended § 6101.19(a)(2) to permit an interested party to request a suspension hearing if the underlying protest is filed by the later of (1) the tenth calendar day after the date of contract award; or (2) the fifth calendar day after the debriefing date for any debriefing that is requested and required. According to two commentators, Congress intended to provide meaningful relief to a protester filing a protest within 5 calendar days of a required debriefing, and to obviate the protester's need to file a so-called "defensive" protest before receiving all information which the FASA requires the agency to provide. Current Board rules nevertheless require that protests be filed within 10 working days of the date on which the protester knew or should have known of the grounds for its protest (§ 6101.5(b)(3)(ii)). Thus, according to the commentators, for protests based on information known or constructively known at the time an award is announced, the 10-working-day period for filing a protest may expire before a required debriefing is held. Consequently, a protest filed after a required debriefing will be timely for purposes of a suspension hearing but untimely as a protest. The commentators suggest that the rules should provide that a protest (other than one based on information that was known or should have been known prior to contract award), will be considered timely if: (1) It is filed within 10 days after the protester knew (or should have known) of the basis of

protest; or (2) it would trigger a suspension under Section 1433(a) of the FASA.

The Board disagrees with this interpretation of the FASA's intent. By providing for agency debriefings, the FASA seeks to remedy the situation in which a protester must file a protest before the basis is known, in order to timely request a suspension hearing. The Act does not change the requirement that a protest be filed within 10 working days of the date on which the basis for the protest is known. When information that serves as the basis for the protest was learned at the debriefing, if a protester files within 5 calendar days after a debriefing, that is also within 10 working days of knowing the basis for the protest. When information that serves as the basis for the protest was learned prior to the debriefing, however, making the change suggested by the commentators would allow the protester to delay its filing and thereby prolong the period of time before contract performance can proceed. The Board decided that to amend its rules for this purpose would be inconsistent with Congress' intent that protests not delay procurements unnecessarily.

Section 6106.19(d) (Proceedings) has been amended to conform to the FASA. It now provides that if contract award has not been made, a suspension shall not preclude an agency from continuing the procurement process up to but not including contract award unless the Board determines such action is not in the best interests of the United States. One commentator suggested that the Board include a "best interests" test in the rule to minimize the potential for factual disputes and evidentiary hearings. The Board believes, however, that "best interests" are more appropriately determined on a case-by-case basis.

Section 6101.29 (Decisions)

One commentator suggested that this rule include the requirement contained in Section 1433 of the FASA which provides that a protest amendment which adds a new ground of protest should be resolved, to the maximum extent possible, within the time limits established for resolving the initial protest. The Board agrees with this comment, and has added language to § 6101.29(b)(2) that reflects the statute.

Section 6106.35 (Award of Costs)

Section 1435 of the FASA permits a successful protester to recover reasonable consultant and expert witness fees, but limits such fees (except for small businesses) to the "highest rate

of compensation for expert witnesses paid by the Federal Government.” One commentator encouraged the Board to provide guidance in the rules on the manner in which this language will be implemented, for example, by publishing any uniform cap that it intends to impose on consultant fees. In addition, the commentator suggested that if consultant fee caps are to be determined on a case-by-case basis, the Board should indicate which party will have the burden of establishing the fee cap and the factors the Board will consider in determining the applicable cap. The commentator suggested that since the Government is in the best position to obtain the information, it should have the burden of providing evidence of “the highest rate of compensation for expert witnesses” paid by the Government. Finally, the commentator suggested that the Board’s rules include procedures under which it will allow recovery of attorney fees at higher than the \$150 per hour rate established by the FASA.

The Board carefully considered the suggestions made by this commentator and has incorporated several of them in the final rules. First, although the Board determined that it would consider requests for reimbursement of attorney fees that exceed the statutory rate on a case-by-case basis, it amended Rule 6101.35(c)(6) to specify that the applicant must show why such an increase is justified, e.g., an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved. Similarly, the Board added § 6101.35(c)(5), which provides that an applicant asserting that it is a qualifying small business (and thus exempt from the fee limitations) must include evidence thereof in its application.

The Board also determined that it would determine consultant fee caps on a case-by-case basis. However, § 6101.35(d)(1) now provides that if the Government contends that any consultant or expert witness fees claimed by the applicant exceed the highest rate of compensation for expert witnesses paid by the agency (in appeals), or the Federal Government (in protests), it must include in the answer evidence of the relevant highest rate.

List of Subjects in 48 CFR Part 6101

Administrative practice and procedure, Government procurement.

For the reasons set out in the preamble, 41 CFR Part 6101 is amended as set forth below:

PART 6101—RULES OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS

1. The authority citation for Part 6101 continues to read as follows:

Authority: 40 U.S.C. 759(f)(7); 41 U.S.C. 607(f).

2. Section 6101.0 is revised to read as follows:

§ 6101.0 Foreword.

The General Services Administration Board of Contract Appeals was established under the Contract Disputes Act of 1978, 41 U.S.C. 601–613, as an independent tribunal to hear and decide contract disputes between government contractors and the General Services Administration (GSA) and other executive agencies of the United States. The Board also hears and decides protests filed under the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f), which involve procurements subject to that Act, and conducts proceedings as required under other laws. (The Board also is empowered to review decisions regarding the qualification of firms to enter into energy savings contracts pursuant to 42 U.S.C. 8287. In conducting such reviews, the Board will apply the rules pertinent to protests to the extent practicable. The Board will act in accordance with these rules and applicable standards of conduct so that the integrity, impartiality, and independence of the Board are preserved.

3. In § 6101.1, paragraph (b)(2) is revised; paragraphs (b)(12) through (15) are redesignated as paragraphs (b)(13) through (16), respectively, and revised; and a new paragraph (b)(12) is added to read as follows:

§ 6101.1 Scope of rules; definitions; construction; rulings and orders; panels; situs [Rule 1].

* * * * *

(b) *Definitions.*

(1) * * *

(2) *Application; applicant.* The term “application” means a submission to the Board of a request for reimbursement of costs, under the Equal Access to Justice Act, 5 U.S.C. 504, or the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f)(5)(C), pursuant to 6101.35. The term “applicant” means a party filing an application.

* * * * *

(12) *Prevailing party.* In a protest, a prevailing party is a party who has demonstrated that a challenged action of a Federal agency violates a statute or

regulation or the conditions of a delegation of procurement authority.

(13) *Protest; protester.* (i) The term “protest” means a written objection by an interested party to any of the following:

(A) A solicitation or other request by a Federal agency for bids or proposals for a contract for the procurement of property or services;

(B) The cancellation of such a solicitation or other request;

(C) An award or proposed award of such a contract;

(D) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

(ii) The term “protester” means an interested party who files a protest with the Board and who has not filed a protest with the GAO concerning the same procurement.

(14) *Respondent.* The term “respondent” means the Government agency whose decision, action, or inaction is the subject of an appeal, protest, petition, or application.

(15) *Working day.* The term “working day” means any day other than a Saturday, Sunday, or legal holiday.

(16) *Working hours.* The Board’s working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each working day.

* * * * *

4. Section 6101.2 is amended by revising paragraph (c) to read as follows:

§ 6101.2 Time; enlargement; computation [Rule 2].

* * * * *

(c) *Computing time.* Except as otherwise required by law, in computing a period of time prescribed by the rules in this part or by order of the Board, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted, unless that day is (1) a Saturday, a Sunday, or a legal holiday, or (2) a day on which the Office of the Clerk of the Board is required to close earlier than 4:30 p.m., or does not open at all, as in the case of inclement weather, in which event the period shall include the next working day. Except as otherwise provided in this paragraph, when the period of time prescribed or allowed is less than 11 days, any intervening Saturday, Sunday, or legal holiday shall not be counted. When the period of time prescribed or allowed is 11 days or more, and in the cases of the 5-day period after a debriefing date and the

10-day period after contract award for filing a protest that requests a suspension hearing (both described in 6101.19(a)(2)), intervening Saturdays, Sundays, and legal holidays shall be counted. Time for filing any document or copy thereof with the Board expires when the Office of the Clerk of the Board closes on the last day on which such filing may be made.

5. Section 6101.13 is amended by revising the title and the first sentence of paragraph (a)(1) and of (a)(2) to read as follows:

§ 6101.13 Small claims procedure in appeals [Rule 13].

(a) *Election.* (1) The small claims procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is \$50,000 or less.

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than \$50,000, such that the election is inappropriate.

6. Section 6101.14 is amended by revising the first sentence of paragraph (a)(1) and of (a)(2) to read as follows:

§ 6101.14 Accelerated procedure in appeals [Rule 14].

(a) *Election.* (1) The accelerated procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is \$100,000 or less.

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than \$100,000, such that the election is inappropriate.

7. Section 6101.18 is amended by revising paragraph (b) introductory text to read as follows:

§ 6101.18 Sanctions and other proceedings [Rule 18].

(b) *Sanctions.* If the Board expressly finds that a protest or a portion of a protest is frivolous or has been brought or pursued in bad faith; or any person has willfully abused the Board's process during the course of a protest, the Board may impose appropriate sanctions. In any type of case, when a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such

orders as are just, including the imposition of appropriate sanctions. The sanctions include:

8. Section 6101.19 is amended by revising paragraphs (a)(2), (a)(3), and (d) to read as follows:

§ 6101.19 Hearings; scheduling; notice; unexcused absences; suspension decisions [Rule 19].

(a) *Scheduling of hearings.*

(1) * * *

(2) *Protest suspension hearing.* The Board will, upon timely request by an interested party, hold a hearing to determine whether the Board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the protested procurement on an interim basis until the Board can decide the protest. Such a request is timely if the underlying protest is filed by the later of (i) the tenth calendar day after the date of contract award; or (ii) the fifth calendar day after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required. The Board will hold the requested hearing within 5 working days after the date of the filing of the protest or, in the case of a request for debriefing under the provisions of 10 U.S.C. 2305(b)(5), or 41 U.S.C. 253b, within 5 working days after the later of the date of the filing of the protest or the date of the debriefing.

(3) *Protest hearing on merits.* Any hearing on the merits of a protest will commence no later than 35 calendar days after the filing of the protest.

(d) *Suspension decision.* The Board shall suspend the respondent's procurement authority, or a delegation thereof, pending a decision on the merits of the protest, unless the respondent establishes at hearing that: (1) Absent suspension, contract award, if not already made, is likely to occur within 30 calendar days; and (2) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board. If a contract award has not been made, a suspension shall not preclude the Federal agency concerned from continuing the procurement process up to but not including award of the contract unless the Board determines that such action is not in the best interests of the United States. The decision regarding suspension will be by order of the panel chairman and may be oral, to be reduced to writing as soon as practicable.

9. Section 6101.28 is amended by redesignating the three sentences of paragraph (a) as (a)(1) and adding new paragraphs (a)(2) and (d) to read as follows:

§ 6101.28 Dismissals [Rule 28].

(a) *Generally.*

(1) * * *

(2) *Protests.* The Board may also dismiss a protest that the Board determines (i) is frivolous; (ii) has been brought or pursued in bad faith; or (iii) does not state on its face a valid basis for protest.

(d) *Settlement agreements.* Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the Board and shall be made a part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest. If a Federal agency is a party to a settlement agreement, the submission of the agreement to the Board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Federal Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

10. Section 6101.29 is amended by revising paragraph (b) to read as follows:

§ 6101.29 Decisions [Rule 29].

(b) *Timing of protest decisions.* (1) A decision on the merits of a protest will be issued within 65 calendar days after the filing of the protest, unless the chairman of the Board determines that the specific and unique circumstances of the protest require a longer period. In that event, the Board shall issue a decision within the longer period determined by the chairman of the Board.

(2) In a protest, the Board will, to the maximum extent practicable within the 65-calendar-day period applicable to the original protest, decide all issues, including those raised by amendment or intervention, that are necessary to the resolution of the case. The Board will whenever possible notify the parties prior to the originally scheduled hearing date, or date for record submission, if it believes that because of a new ground of protest raised by an amendment or by an intervention, the protest might not be decided within the original 65-calendar-day period.

11. Section 6101.35 is amended by revising the first sentence of paragraph (a), adding paragraphs (c)(5) and (c)(6), and adding a sentence of the end of paragraph (d)(1) to read as follows:

§ 6101.35 Award of costs [Rule 35].

(a) Requests for costs. An appropriate prevailing party in a proceeding before the Board may apply for an award of costs, including if applicable an award of attorney fees, under the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f), the Equal Access to Justice Act, 5 U.S.C. 504, or any other provision that may entitle that party to such an award, subsequent to the Board's decision in the proceeding. * * *

* * * * *

(c) Application requirements. * * *

(5) If the applicant asserts that it is a qualifying small business concern, contain evidence thereof.

(6) If the application requests reimbursement of attorney fees that exceed the statutory rate, explain why an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies such fees.

(d) Proceedings.

(1) * * * If respondent contends that any fees for consultants or expert witnesses for which reimbursement is sought in the application exceed the highest rate of compensation for expert witnesses paid by the agency (appeals), or by the Federal Government (protests), respondent shall include in the answer evidence of such highest rate.

* * * * *

12. Section 6101.36 is amended by revising the third sentence of paragraph (c) to read as follows:

§ 6101.36 Payment of Board awards [Rule 36].

* * * * *

(c) Procedure for filing of certificates of finality. * * * When the form is executed on behalf of an appellant or applicant by an attorney or other representative, proof of signatory authority shall also be furnished. * * *

* * * * *

13. In the appendix to part 6101, Form No. 4 (Government Certificate of Finality) and Form No. 5 (Appellant/Protester/Intervenor/Applicant Certificate of Finality) are revised to read as follows:

APPENDIX—FORM NOS. 1-5

* * * * *

Form 4—Board of Contract Appeals

General Services Administration, Washington, DC 20405

GSBCA _____

Contract/Solicitation No. _____

GOVERNMENT CERTIFICATE OF FINALITY

- A. Date claim(s) filed with the contracting officer;
B. Amount to be paid: \$ _____
C. Agency address (regional office if other than central office);
D. Agency Certification.

hereby certifies that:

- (1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;
(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit.

Date _____

Government Agency _____

By _____

Signature and Title _____

Note: This format shall not be printed, reproduced, or stocked by the Central office or regional offices and shall be used only as a guide for individual preparation.

Form 5—Board of Contract Appeals

General Services Administration, Washington, DC 20405

GSBCA _____

Contract/Solicitation No. _____

APPELLANT/PROTESTER/INTERVENOR/APPLICANT CERTIFICATE OF FINALITY

- A. Address to which check should be sent (if check is to be sent to counsel, enclose a power of attorney);
B. Appellant/Protester/Intervenor/Applicant Certification

hereby certifies that:

- (1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;
(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit; and
(3) it agrees to accept the amount awarded, plus any interest awarded, in accordance with the Board's decision in this case, in full and final satisfaction of its case.

Date _____

Appellant/Protester/Intervenor/Applicant _____

By _____

Signature and Title _____

Note: This format shall not be printed, reproduced, or stocked by the Central office

or regional offices and shall be used only as a guide for individual preparation.

Dated: March 23, 1995.

Stephen M. Daniels, Chairman, GSA Board of Contract Appeals. [FR Doc. 95-8135 Filed 4-3-95; 8:45 am]

BILLING CODE 6820-RW-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040-5040-01; I.D. 032995A]

Groundfish of the Bering Sea and Aleutian Islands Area; Inshore Component Pollock in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the pollock roe season allowance of pollock for the inshore component in the Aleutian Islands subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 30, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The allowance of pollock TAC for vessels catching pollock for processing by the inshore component in the AI was established by the final 1995 initial groundfish specifications (60 FR 8479, February 14, 1995) as 16,838 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), determined, in accordance with § 675.20(a)(8), that the