

It should be noted that, in the definition of a "program," a private sector practitioner must not only hold himself or herself out as providing such treatment, referral or diagnosis, but also must provide such treatment, referral or diagnosis. Therefore, even though a person may hold himself or herself out as providing substance abuse treatment, diagnosis or referral, that person would not constitute a program if he or she does not provide such treatment, diagnosis or referral.

It should also be noted that, even if the regulations do apply, the regulations do not bar investigative or regulatory scrutiny of such programs. Law enforcement agents may obtain a court order to place an undercover agent in a program, 42 CFR 2.67, or a court order directing a program to disclose patient identifying information for use of records to investigate or prosecute a program, 42 CFR 2.66.

This Federal agency also requested that the Department provide more guidance to law enforcement on the phrase "holds itself out as" so as to enable them to determine whether an investigation of a particular practitioner via patient records or undercover operations would require a court order. This agency suggested that the Department require private practitioners who provide such treatment, diagnosis or referral to indicate this through, for example, state licensing procedures, advertising or the posting of notice in their offices.

The Department believes that private practitioners may hold themselves out as providing substance abuse treatment, diagnosis or referral by the means described above. However, the primary purpose of the statute is to protect the confidentiality of alcohol and drug abuse patient records. The Department does not believe that requiring all programs to, for example, post notice in some conspicuous place (stating that they were subject to these regulations) is meaningful, since it does not necessarily mean that the regulations would not be applicable if such signs were not posted. Given their questionable value, such requirements would place an unnecessary burden on programs. Furthermore, federally assisted programs are to inform law enforcement officials who are seeking records that they are covered by the regulations and cannot provide patient records without a court order, thus placing such officials on notice.

Finally, although the law and the implementing regulations require that law enforcement officials take additional measures to obtain certain information (*i.e.*, court orders to obtain

patient records or to place an undercover agent in a program), the Department believes that the narrowing of these regulations to specialized programs and practitioners should make it easier for such officials to identify "programs" to who these regulations are applicable and, thus, to obtain the relevant court orders.

#### Economic Impact

This rule does not have cost implications for the economy of \$100 million or otherwise meet the criteria for a major rule under Executive Order 12291, and therefore do not require a regulation impact analysis. Further, these regulations will not have a significant impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

#### Federal Supremacy

These regulations are not intended to preempt the field of law which they cover to the exclusion of all State laws in that field. However, consistent with established principles of constitutional law, the Federal regulations will supersede State law to the extent that there is a conflict. See 42 CFR 2.20 for further discussion of the relationship between these regulations and State laws.

#### Paperwork Reduction Act

There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

#### List of Subjects in 42 CFR Part 2

Alcohol abuse, alcoholism, Confidentiality, Drug abuse, Health records, Privacy.

Dated: February 14, 1995.

**Philip R. Lee,**

*Assistant Secretary for Health.*

Approved: March 22, 1995.

**Donna E. Shalala,**

*Secretary.*

For the reasons set out in the preamble, part 2 of title 42, Code of Federal Regulations, is amended as follows:

#### PART 2—[AMENDED]

1. The authority citation for part 2 is revised to read as follows:

**Authority:** Sec. 408 of Pub. L. 92-255, 86 Stat. 79, as amended by sec. 303 (a), (b) of Pub. L. 93-282, 83 Stat. 137, 138; sec. 4(c)(5)(A) of Pub. L. 94-237, 90 Stat. 244; sec. 111(c)(3) of Pub. L. 94-581, 90 Stat. 2852;

sec. 509 of Pub. L. 96-88, 93 Stat. 695; sec. 973(d) of Pub. L. 97-35, 95 Stat. 598; and transferred to sec. 527 of the Public Health Service Act by sec. 2(b)(16)(B) of Pub. L. 98-24, 97 Stat. 182 and as amended by sec. 106 of Pub. L. 99-401, 100 Stat. 907 (42 U.S.C. 290ee-3) and sec. 333 of Pub. L. 91-616, 84 Stat. 1853, as amended by sec. 122(a) of Pub. L. 93-282, 88 Stat. 131; and sec. 111(c)(4) of Pub. L. 94-581, 90 Stat. 2852 and transferred to sec. 523 of the Public Health Service Act by sec. 2(b)(13) of Pub. L. 98-24, 97 Stat. 181 and as amended by sec. 106 of Pub. L. 99-401, 100 Stat. 907 (42 U.S.C. 290dd-3), as amended by sec. 131 of Pub. L. 102-321, 106 Stat. 368, (42 U.S.C. 290dd-2).

2. In § 2.11, the definition of *Program* is revised to read as follows:

#### § 2.11 Definitions.

\* \* \* \* \*

*Program* means:

(a) An individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or

(b) An identified unit within a general medical facility which holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or

(c) Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers. (See § 2.12(e)(1) for examples.)

\* \* \* \* \*

3. Section 2.12(e)(1) is amended by adding the following sentence at the end to read as follows:

#### § 2.12 Applicability.

\* \* \* \* \*

(e) \* \* \* (1) \* \* \* However, these regulations would not apply, for example, to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose, unless the primary function of such personnel is the provision of alcohol or drug abuse diagnosis, treatment or referral and they are identified as providing such services or the emergency room has promoted itself to the community as a provider of such services.

\* \* \* \* \*

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**FEDERAL COMMUNICATIONS  
COMMISSION**
**47 CFR Part 73**
**[MM Docket No. 93-170]**
**Radio Broadcasting Services; Bemidji  
and Red Lake, MN**
**AGENCY:** Federal Communications  
Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 238C1 to Bemidji, Minnesota, as that community's third commercial FM broadcast service in response to a petition filed by J. Thomas Lijewski. See 58 FR 35421, July 1, 1993. The coordinates for Channel 238C1 at Bemidji are 47-28-29 and 94-52-49. In response to a counterproposal filed by Red Lake Band, we will allot Channel 231C1 to Red Lake, Minnesota, on the Red Lake Reservation. The coordinates for Red Lake are 47-55-30 and 95-19-00. Canadian concurrence has been received for both allotments. With this action, this proceeding is terminated.

**DATES:** Effective June 16, 1995. The window period for filing applications for Channel 238C1 at Bemidji, Minnesota, and Channel 231C1 at Red Lake, Minnesota, will open on June 16, 1995, and close on July 17, 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. 93-170, adopted April 20, 1995, and released May 2, 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:** Secs. 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 Minnesota, is amended by adding Channel 238C1 at Bemidji and Red Lake, Channel 231C1.

Federal Communications Commission.

**John A. Karousos,**

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

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**DEPARTMENT OF ENERGY**
**48 CFR Parts 926, 952, and 970**
**RIN 1991-AB11**
**Acquisition Regulation:  
Implementation of Section 3021 of the  
Energy Policy Act of 1992**

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) hereby amends the Department of Energy Acquisition Regulation (DEAR) to carry out Section 3021 of the Energy Policy Act of 1992 which requires DOE to achieve a 10 percent goal for awards of prime contracts and subcontracts for specific types of universities and for small business concerns owned and controlled by socially and economically disadvantaged individuals and by women.

**EFFECTIVE DATE:** June 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Webb, Office of Policy (HR-51), Office of Procurement and Assistance Management, U.S. Department of Energy, Washington, DC 20585, (202) 586-8264.

**SUPPLEMENTARY INFORMATION:**

- I. Background
  - A. Discussion
  - B. Disposition of Comments
- II. Procedural Requirements
  - A. Regulatory Review
  - B. Review Under Executive Order 12778
  - C. Review Under the Regulatory Flexibility Act
  - D. Review Under the Paperwork Reduction Act
  - E. Review Under Executive Order 12612
  - F. National Environmental Policy Act

**I. Background**
**A. Discussion**

Section 3021(a) of Energy Policy Act of 1992 (Pub. L. 102-486) requires that DOE, to the extent practicable, provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts pursuant to competitive procedures be expended with small business concerns

owned and controlled by socially and economically disadvantaged individuals or by women; with historically Black colleges and universities; or with colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans.

On July 11, 1994, a proposed rule to amend the DEAR to establish DOE policies and procedures for implementing Section 3021 of the Energy Policy Act was published at 59 FR 35294.

Seven sets of comments were received. Those comments have been considered and appropriate changes have been made as described in the analysis below.

**B. Disposition of Comments**

One commenter recommended that the proposed rule "be rescinded and that these rules be redrawn to incorporate reforms made possible" by the enactment of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355. We have made alterations that will be discussed later in this preamble to the rule to reflect the Streamlining Act's effects. Generally, we have expanded the provisions of the rule designed to achieve the goals of Section 3021 by including recognition of small disadvantaged business set-asides as authorized by the Streamlining Act, the introduction of a simplified acquisition threshold, and the deletion of the "small purchase threshold" also provided by the Streamlining Act. Another commenter "strongly urge[s] implementation" of these rules. We are proceeding with the implementation of this section of the Energy Policy Act with the promulgation of this rule.

A commenter states that we have misinterpreted Section 3021 in that "[t]he term 'no less than' does not equate with a goal but, rather, with a specific amount; a set-aside." A second commenter contends that Section 3021 establishes a goal, but believes that the provisions and clauses of the proposed rule were not sufficiently clear that the 10 percent is a goal and not "a quota." We disagree with the first commenter in that the statutory language is "*To the extent practicable*, the head of each agency shall provide that the obligation of *not less than 10 percent \* \* \**" (emphasis added.) It is clear that the percentage sets a target that is conditioned on the circumstances of the competitive procurements. We believe that the promulgation of this final rule in its present form is the proper implementation of this statutory provision. We have reviewed each of the provisions of the solicitation provisions