

**DEPARTMENT OF LABOR****Office of the Secretary****29 CFR Part 44**

RIN 1290-AA19

**Process for Electing State Agency Representatives for Consultations With Department of Labor Relating to Nationwide Employment Statistics System**

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

**SUMMARY:** This document provides for the final text of the regulation establishing a process for the election of representatives of the States to participate in formal consultations with the Department of Labor relating to the development of an annual employment statistics plan and to address other employment statistics issues. Section 15(d)(2) of the Wagner-Peyser Act, as amended by section 309 of the Workforce Investment Act of 1998, requires the Secretary to establish a process for the election of representatives of each of the 10 Federal regions of the Department. Interim final regulations were published on December 18, 1998. This document provides the Department of Labor's response to the comments on the interim final regulations. In addition, minor technical changes are made to the title of the regulation to clarify that the representatives are State agency employment statistics directors, to clarify references to the Federal regions and to the timing of the initial election, and to clarify the title of the Commissioner of Labor Statistics.

**DATES:** This final rule is effective on March 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Kerr, Office of the Commissioner of Labor Statistics, Department of Labor, Room 4044, Postal Square Building, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212, 202-691-7808.

**SUPPLEMENTARY INFORMATION:** On December 18, 1998 interim final regulations and a request for comments on the Process for Electing State Agency Representatives for Consultations with the Department of Labor Relating to the Nationwide Employment Statistics System were published in the **Federal Register** [63 FR 70260]. Interested persons were afforded the opportunity to submit comments to the Bureau of Labor Statistics within 90 days after the publication of the interim final regulations in the **Federal Register**. Two comments were received from State agency employment statistics directors.

The first comment addressed section 44.2(a) of the regulation that provides for staggered election cycles. Under the regulation, after the initial election in which representatives from each of the ten Federal regions were elected, there are staggered elections with one-half of the regions electing representatives each year for biennial terms. The regulation specifies the regions that are included in each cycle. The preamble to the interim final regulation explained that the purpose of the staggered cycles is to ensure that at least one-half of the representatives will have the benefit of, and expertise resulting from, the previous year's consultations and that this approach provides important continuity to the consultation process while also allowing for appropriate turnover. The preamble also stated that the five regions identified for each respective cycle were selected to ensure that all turnover does not occur in the same part of the country at the same time. The commenter questioned whether the last objective is accomplished by the regulation. Specifically, the commenter noted that three of the five regions specified for the first staggered election cycle (Regions VII, VIII, and X) contain 13 contiguous States and are thus in the same part of the country. The commenter suggested that the five regions be selected by lot rather than be specified in the regulation. The Department of Labor believes that given the configuration of the ten regions, there inherently will be contiguous regions and States in any grouping of five of the regions. Moreover, the suggestion to determine the five regions by lot does not ensure that there will be fewer contiguous regions and States in each cycle. The Department of Labor therefore believes that the regulation sufficiently advances the objectives of the staggering of the election cycles and has not made any changes in response to this comment.

The second comment addressed section 44.3(a) of the regulation relating to the election process. The regulation requires the Commissioner of Labor Statistics to provide a ballot to each employment statistics director containing the names of all the agency directors in the appropriate region. The commenter suggested that, in order to promote informed decisions, the Department of Labor ask each of the directors to prepare a brief summary of their qualifications and interests, including educational background, work history, and the reasons why they are interested in participating in the consultation process, and that the Department include the summary with

the ballots. The Department of Labor believes that each agency director should retain the responsibility and discretion to determine the information, if any, to distribute among the other directors for purposes of these elections and how such information is to be disseminated. The Department of Labor therefore does not believe such information should be a subject of these regulations, and has not made any changes in response to this comment.

The Department of Labor has slightly revised the title of the regulation to refer to State agency employment statistics representatives rather than the State employment statistics agency representatives in recognition of the fact that the employment statistics function may only be one component of a State agency.

The Department of Labor has also made two technical changes to section 44.2(a) that do not affect the substance of the regulation. The first change clarifies that the initial election was to have been held not later than February 17, 1999. The interim final regulation provided that the election was to be held within 30 days of the effective date of the rule. Since the interim final regulation took effect on January 19, 1999, that 30-day period ended on February 17. That initial election was held on January 19, 1999. The second change is to identify the regions by number rather than by the location of the principal office. Since some agencies within the Department of Labor have different regional structures with principal offices located in cities other than the cities identified in the interim final regulation, the references to the locations could cause confusion. In order to avoid that result, the regulation has been modified to refer to the regions by the numbers designated for each region in former OMB Circular A-105.

Finally, in section 44.3(a) of the regulation, the Department has modified the title of the Commissioner from the Commissioner of the Bureau of Labor Statistics to the Commissioner of Labor Statistics, which is the statutory title.

The Department of Labor further notes that two elections have been carried out pursuant to the interim final regulation and the Department believes the regulations have effectively addressed the relevant election process issues. It may also be noted that the consultative group elected through this election process, now referred to as the Workforce Information Council, has been meeting with the Department over the past year and recently issued the first annual employment statistics report entitled "Quality Information, Informed

Choices: New Directions for the Workforce Information System.”

#### Statutory Authority

The Department of Labor is publishing this regulation under the authority provided in section 506(c)(2) of the Workforce Investment Act of 1998 (20 U.S.C. 9276(c)(2)).

#### Regulatory Flexibility Act

The Department of Labor, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The rule relates only to State Agency representatives and therefore does not affect businesses, large or small, or any other small entities as defined under the Act. The Secretary has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

#### Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

#### Executive Order 13132

The interim final regulation was published prior to the August 4, 1999 effective date of the Executive Order. However, the Department has reviewed the final regulation in accordance with Executive Order 13132 relating to Federalism, and has determined that the regulation does not impose unfunded mandates on the States and does not preempt any State laws. In addition, the Department did consult with the representatives of the State agency employment statistics directors regarding this regulation.

#### Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Small Business Regulatory Enforcement Fairness Act of 1996 and Congressional Notification

The Department has determined that this final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. The Department will submit to each House of Congress and to the Comptroller General a report regarding the issuance of this final rule prior to the effective date of the rule that will note that this rule does not constitute a “major rule” for purposes of the Act.

#### List of Subjects in 29 CFR Part 44

Economic Statistics, Employment.

Signed on this 3rd day of February, 2000.

**Alexis M. Herman,**  
Secretary of Labor.

For the reasons stated in the preamble, the Department of Labor hereby revises part 44 of title 29 of the Code of Federal Regulations to read as follows:

#### PART 44—PROCESS FOR ELECTING STATE AGENCY EMPLOYMENT STATISTICS REPRESENTATIVES FOR CONSULTATIONS WITH DEPARTMENT OF LABOR

Sec.

- 44.1 Purpose and scope.
- 44.2 Election cycle and tenure of representatives.
- 44.3 Election process.

**Authority:** 5 U.S.C. 301; 20 U.S.C. 9276(c); 29 U.S.C. 49 1–2.

##### § 44.1 Purpose and scope.

This part contains the regulations of the U.S. Department of Labor establishing a process for the election of representatives of the States to participate in formal consultations with the Department of Labor for purposes of the development of an annual employment statistics plan and to address other employment statistics issues. The representatives are to be elected by and from the State employment statistics directors affiliated with the State agencies designated to carry out the employment statistics responsibilities under the revised section 15 of the Wagner-Peyser Act (29 U.S.C. 49 1–2), as amended by

section 309 of the Workforce Investment Act of 1998. The revised section 15(d)(2) of the Wagner-Peyser Act requires the Secretary to establish a process for the election of such representatives from each of the 10 Federal regions of the Department of Labor.

##### § 44.2 Election cycle and tenure of representatives.

(a) *Election cycle.* The States located within each Federal region, as defined in this paragraph, shall elect one representative in accordance with the procedures specified in this part. The initial election for representatives of the States from all 10 Federal regions will be held not later than February 17, 1999. For purposes of this section, the Federal regions shall be the Standard Federal regions identified in former OMB Circular A–105 (issued April 4, 1974). This former Circular is available through the Office of the Commissioner of Labor Statistics, telephone number (202) 691–7808. For the representatives elected from the Federal regions II, IV, VII, VIII, and X, the initial term shall terminate on January 1, 2000. Subsequent elections for representatives from such regions shall be held in the last quarter of 1999 and thereafter biennially within the last calendar quarter of the year. For the representatives from the Federal regions I, III, V, VI, and IX, the initial term shall terminate on January 1, 2001. Subsequent elections for representatives from such regions shall be held within the last calendar quarter of 2000 and thereafter, biennially within the last calendar quarter of the year. After the initial election, the terms of all representatives shall terminate on January 1 of the third calendar year after the preceding scheduled election.

(b) *Tenure.* The terms of the representatives elected in the first election shall commence upon election. The terms of representatives elected in subsequent elections shall commence January 1 of the year following the scheduled election. Representatives may serve for an unlimited number of terms.

##### § 44.3 Election process.

(a) *Process.* The Commissioner of Labor Statistics of the U.S. Department of Labor (hereafter referred to as “the Commissioner”) or his or her designee shall conduct the elections. The Commissioner shall provide a ballot containing the names of the employment statistics directors in the appropriate region to the employment statistics director in each State who is affiliated with the State agency designated pursuant to section 15(e) of the Wagner-Peyser Act. If a State has not

designated an agency, or has not provided the name of the employment statistics director to the Commissioner, the State shall not participate in the election process. Each director may vote for one director to be the regional representative. The Commissioner shall prescribe a time limit that will not be less than one week for the directors to mark and return the ballots. Only votes received by the Commissioner within the prescribed time limit will be counted. The Commissioner will tally the votes from the ballots received within the prescribed time limit and the director receiving the most votes in the

region will be the representative for that region. If there is a tie after the first round of votes are counted, the Commissioner shall conduct additional rounds of voting using a ballot containing the names of the directors who tied with the most votes in the previous round until a representative is elected. The Commissioner will prescribe a time limit of not less than one week for each additional round of voting and will tally the votes received within the prescribed time limit. The director with the most votes will be the representative.

(b) *Method of transmission.* The Commissioner may distribute the ballots

relating to the election under this part by electronic mail or other methods the Commissioner determines to be appropriate and may specify the methods through which votes are to be cast.

(c) *Vacancies.* If a representative does not complete the term, the Commissioner shall conduct an election to elect a replacement for the remainder of the term using the procedures described in paragraph (a) and (b) of this section.

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