

of metropolitan counties outside of cities, towns or places of 50,000 or more population.

#### **PART 1778—EMERGENCY AND IMMINENT COMMUNITY WATER ASSISTANCE GRANTS**

5. The authority citation for part 1778 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

6. Amend § 1778.4 by adding a definition for “Statewide Nonmetropolitan Median Household Income” in alphabetical order to read as follows:

##### **§ 1778.4 Definitions.**

\* \* \* \* \*

*Statewide Nonmetropolitan Median Household Income (SNMHI).* Median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

#### **PART 1780—WATER AND WASTE LOANS AND GRANTS**

7. The authority citation for part 1780 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

##### **Subpart A—General Policies and Requirements**

8. Amend § 1780.3(a) by revising the definition for “Statewide Nonmetropolitan Median Household Income” to read as follows:

##### **§ 1780.3 Definitions and grammatical rules of construction.**

(a) \* \* \*

*Statewide nonmetropolitan median household income* means the median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

\* \* \* \* \*

#### **CHAPTER XVIII—Rural Housing Service, Rural Business—Cooperative Service, and Farm Service Agency, Department of Agriculture**

##### **PART 1942—ASSOCIATIONS**

9. The authority citation for part 1942 continues to read:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989.

##### **Subpart A—Community Facility Loans**

10. Amend subpart A by adding a new § 1942.21 to read as follows:

##### **§ 1942.21 Statewide Nonmetropolitan Median Household Income.**

Statewide Nonmetropolitan Median Household Income includes counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

#### **CHAPTER XXXV—Rural Housing Service, Department of Agriculture**

##### **PART 3570—COMMUNITY PROGRAMS**

11. The authority citation for part 3570 continues to read:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989.

##### **Subpart B—Community Facilities Grant Program**

12. Amend § 3570.53 by revising the definition for “State nonmetropolitan median household income” to read as follows:

##### **§ 3570.53 Definitions.**

\* \* \* \* \*

*State nonmetropolitan median household income.* The median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

\* \* \* \* \*

#### **CHAPTER XLII—Rural Business—Cooperative Service, Rural Utilities Service, Department of Agriculture**

##### **PART 4274—DIRECT AND INSURED LOANMAKING**

13. The authority citation for part 4274 continues to read:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

##### **Subpart D—Intermediary Relending Program (IRP)**

14. Amend § 4274.302 (a) by adding a definition for “Statewide Nonmetropolitan Median Household Income” in alphabetical order to read as follows:

##### **§ 4274.302 Definitions and abbreviations.**

(a) \* \* \*

*Statewide Nonmetropolitan Median Household Income (SNMHI).* Median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

\* \* \* \* \*

Dated: July 16, 2004.

**Gilbert G. Gonzalez,**

*Under Secretary, Rural Development.*

[FR Doc. 04–18087 Filed 8–6–04; 8:45 am]

**BILLING CODE 3410–15–P**

#### **NATIONAL MEDIATION BOARD**

##### **29 CFR Part 1210**

##### **Administration of Arbitration Programs**

**AGENCY:** National Mediation Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The NMB has been considering changes to its rules and procedures to facilitate the more timely resolution of grievances (“minor disputes”) among grievants and carriers in the railroad industry. Because of its role in the administration of this program, the NMB has solicited public input on the factors that it should consider in accomplishing this goal. In particular, because of the NMB’s statutory responsibility for the appointment and compensation of neutral arbitrators (“referees”) to resolve deadlocks within NRAB divisions, and the NMB’s overall statutory responsibility for the administrative processing of grievances to facilitate the timely resolution of disputes in the rail industry through PLBs and SBAs, the NMB has been considering what initiatives it may undertake to further the resolution of minor disputes on a more timely and expeditious basis. The Board is today proposing to establish a new Part 1210 to its rules appearing at 29 CFR, Chapter X, to accomplish these goals.

**DATES:** Comments must be in writing and must be received by September 8, 2004.

**ADDRESSES:** Submit written comments to: Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board, 1301 K Street, NW., Suite 250 “East, Washington, DC 20005. Attn: NMB Docket No. 2003–01N. You may submit your comments via letter, or electronically through the Internet to the following address: [arb@nmb.gov](mailto:arb@nmb.gov). If you submit your comments electronically, please put the full body of your comments in the text of the electronic message and also as an attachment readable in MS Word. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 692–5086. Please cite NMB Docket No. 2003–01N in your comment.

**FOR FURTHER INFORMATION CONTACT:**

Roland Watkins, NRAB Administrator, 1301 K Street, NW., Suite 250 East, Washington, DC 20005 (telephone: 202-692-5000).

**SUPPLEMENTARY INFORMATION:****A. Background and Summary**

The Railway Labor Act (RLA), 45 U.S.C. 151 *et seq.* establishes the National Mediation Board (NMB) whose functions, among others, are to administer certain provisions of the RLA with respect to the arbitration of labor disputes in the rail industry, including the administration of the National Railroad Adjustment Board (NRAB), established under 45 U.S.C. 153, First, and the Public Law Boards (PLBs) and Special Boards of Adjustment (SBAs) established pursuant to 45 U.S.C. 153, Second. 45 U.S.C. 154, Third, provides the NMB with authority for administration, including making expenditures for necessary expenses, of the NRAB, the PLBs and SBAs.

Pursuant to its authority under 45 U.S.C. 154, Third, the NMB has been considering changes to its rules to better facilitate the timely resolution of minor disputes between grievants and carriers in the railroad industry. Because of its fundamental role in the administration of the NRAB, PLBs and SBAs, the NMB solicited public comment on the various factors that might be considered in accomplishing this goal.

On August 7, 2003, the NMB issued an Advance Notice of Proposed Rulemaking (ANPRM) (68 FR 46983) soliciting public comment on six different issues that had been identified by the Board as critical to the improvement of the minor dispute resolution process in the rail industry. In addition, the NMB held a public hearing on December 19, 2003 (*see* 68 FR 66500, Nov. 26, 2003) to receive in person testimony from interested parties.

As a result of the ANPRM and the public hearing, the NMB received numerous comments from interested parties. In response to the public comments, the Board is now proposing to add a new Part 1210 to its rules appearing at 29 CFR, Chapter X. Proposed Part 1210, "Administration of Arbitration Program—National Railroad Adjustment Board, Public Law Boards (PLBs) and Special Boards of Adjustment (SBAs)" establishes the NMB's procedures and policies with respect to the arbitration of minor disputes in the rail industry.

Highlights of proposed Part 1210 focus on the NMB's administrative responsibilities with respect to the various arbitration fora; NMB criteria for

establishment and maintenance of rosters of arbitrators; criteria for listing on the roster of arbitrators; procedures for parties to request arbitration services from the NMB; case consolidation; time frames for processing of decision and awards; and, the NMB's proposed fee schedule for arbitration services.

**B. Public Comments**

The NMB solicited public comments via an ANPRM issued on August 7, 2003 (68 FR 46983). Six public timely sets of public comments were received in response to the ANPRM. The Board posed six written question sets to commenters. These six question sets, and a summary of the responses received are discussed below. The NMB is very appreciative of the time, effort and thoughtfulness expressed by the commenters in their written responses.

*Question One:* If the NMB promulgates procedures for the administrative processing of NRAB cases in which the parties request that the Government compensate the neutral ("referee"), what should be the criteria or guidelines for these procedures?

It has been suggested to the NMB, that a desirable goal is to have minor disputes resolved within one year of the filing of a Notice of Intent to File a Submission. At present, it is not uncommon for cases to remain unresolved for two years.

*Summary of public comments received:* Although there was a diversity of responses, most commenters believed that it was a reasonable goal for NRAB proceedings to be completed within one year of the filing of a grievance. Commenters, however, differed, on the NMB's role in the process. Some commenters, from both the carriers and labor, believed that the NMB has no role in providing for the procedures of the NRAB. Other commenters recognized that the NMB is responsible for funding the NRAB, the PLBs and the SBAs, and urged the Board to use its administrative authority with respect to budgeting and funding to make sure that the various arbitration boards completed their functions in a timely manner—generally within one year of the filing of a grievance.

*Board's response:* The NMB has considered the commenters responses and agrees, for the present time, that it will not participate in the substantive decision-making process with respect to cases before the NRAB. However, the NMB's role with respect to the funding of the NRAB and the other arbitration boards, means that the NMB has an important role to play. More specifically, the NMB must ensure that its program of arbitration services is

conducted in a manner that promotes economy and efficiency in the NMB's use of public funds, and the timely resolution of the NRAB's case backlog. Accordingly, while the NMB does not intend, at this time, to prescribe specific case handling procedures for the NRAB and the other arbitration boards, the NMB is proposing a funding schedule in proposed § 1210.10, that the parties will be expected to adhere to unless exempted by the NMB's Director of Arbitration Services. The purpose of the proposed schedule is to ensure that cases are resolved in a manner that is consistent with the efficient expenditure of public funds.

*Question Two:* If a stated goal of any new procedures to be adopted by the NMB is to have the cases decided by an arbitrator within one year from the date of the filing of the Notice of Intent, what steps do you recommend comprise this procedure? Do you believe that a one year goal is reasonable? If not, why not?

*Summary of public comments received:* Virtually all the commenters agreed that a one year case resolution goal is a reasonable one for the parties to achieve. The only significant difference among commenters in their responses was the manner in which it was proposed to achieve this goal.

Some commenters believed that the goal could be achieved solely by better cooperation among the parties without NMB involvement. Other commenters believed that a lack of funding is precluding the timely resolution of cases. Still other commenters suggested that the entire system of arbitration, lacking any established time lines for case resolution was contributing to the lengthy case resolution process.

*Board's response:* The issues involving the length of time necessary to conduct arbitration proceedings before the NRAB and the other arbitration fora date back almost to the beginning of the passage of the RLA. The Act has been amended over the years, and other initiatives have been undertaken, all with the stated goal of achieving minor disputes resolution within one year of the initial filing of a Notice of Intent.

It is the NMB's belief that the present system of arbitration, lacking any incentives or "teeth" simply does not offer the parties any reason to adhere to a one year time frame for the resolution of cases. Accordingly, the Board is proposing in § 1210.10, a time frame for the payment of arbitration services that will require, in order to be paid with public funds, that arbitrators must issue decisions within one year of the filing of a Notice of Intent, unless an exemption is granted by the NMB's Director of Arbitration Services. In order

to ensure that case processing is expedited, proposed § 1210.10 also establishes specific case processing requirements that must be met in order to ensure that the NMB makes payment to the arbitrator.

*Question Three:* If the parties do not agree to follow the procedures adopted by the NMB, should there be any adverse consequences? Should the parties have options with respects to these procedures? What would you recommend be the steps that comprise an efficient case resolution procedure?

*Summary of public comments received:* Since many commenters did not believe that the NMB has any role—other than that of funding the arbitration process—they did not believe that the Board had a role to play with respect to the questions posed. Conversely, some commenters suggested that arbitrators be barred from hearing cases if they did not meet established decision time frames.

Nevertheless, certain common themes emerged, as discussed above, that strongly suggested that a one year case resolution goal was a reasonable one with respect to minor disputes.

*Board's response:* Since this proposed rule effectively establishes a one-year time frame for the resolution of arbitration cases, the NMB has tentatively decided to bar the assignment of additional cases to those arbitrators who do not meet the proposed stated time frames. Additionally, the NMB will not pay for arbitration decisions that are not rendered within the proposed time frames.

*Question Four:* What should happen to those cases that are still pending after one year in which the parties have not placed the cases before a Public Law Board, pursuant to 45 U.S.C. § 153, Second? If the cases are placed before a Public Law Board, should a time limit be imposed for the resolution of those cases?

This question addressed cases at the NRAB which have been pending for more than one year.

*Summary of public comments received:* The commenters generally believed that the establishment of case resolution time standards (for NMB payment of arbitration) would adequately address the issue of cases pending before an NRAB Division for more than one year. With respect to PLBs, some commenters opined that the NMB had no role to play whatsoever (with the exception of funding of the PLBs). Other commenters suggested that any case resolution time frames established for the NRAB, should apply equally to the PLBs.

*Board's response:* The NMB concurs with those commenters who believe that the establishment of a one-year case resolution standard for NRAB proceedings should adequately address the NMB's concerns. The NMB also agrees with those commenters who believe that the same basic case resolution time frame should be applicable to proceedings of the PLBs. Accordingly, proposed § 1210.10(c) states that the NMB will only pay for the arbitration of cases on PLBs heard and decided within one year of the addition of the matter to the respective PLB.

*Question Five:* In order to ensure the most efficient use of limited Government resources, should the NMB, in agreeing to pay for the appointment of an arbitrator ("referee") require the consolidation of similar cases dealing with similar issues? If, in your view, case consolidation is a viable option for improving the resolution of cases, what should be the standards adopted for consolidation? What should the NMB do if the parties refuse to consolidate cases, when in the NMB's view, it would be appropriate to do otherwise?

*Summary of public comments received:* Many commenters believed that case consolidation could serve many beneficial purposes. However, nearly all the comments suggested that case consolidation was filled with pitfalls. Who would decide when case consolidation was appropriate? How would "similar" cases be defined and identified? In general, the commenters believed that case consolidation, while conceptually sound, could not be done without the concurrence of all parties.

*Board's response:* The NMB believes that case consolidation is an initiative that the parties need to consider, and one that should be pursued. The Board believes that many of the cases pending before the NRAB, PLBs and SBAs are similar in nature, or are based on the same underlying facts and/or circumstances. To this end, the NMB proposed that the parties attempt to develop broad criteria or guidelines for case consolidation. While the Board is hopeful that consolidation criteria can eventually be developed by the parties, the Board is also mindful of its existing responsibilities to provide for the efficient and economical expenditure of public funds. Accordingly, proposed § 1210.9 permits the NMB's Director of Arbitration Services to consolidate the arbitration of minor disputes when he/she determines that this will serve the interests of economy and/or efficiency of the NMB's program for the administration of arbitration services. The NMB anticipates that this authority will be used judiciously, and is hopeful

that in the near future the parties will come to agreement on criteria that may be used to foster case consolidation, when appropriate.

*Question Six:* As the goal of this initiative is to improve the processing of disputes before the NRAB, are there any other recommendations or suggestions that you would make to the NMB with regard to its statutory responsibilities for the administration of the NRAB?

*Summary of public comments received:* Several commenters offered additional suggestions to reduce the current case backlog at the various arbitration fora administered by the NMB. Among the suggestions received were: "parties pay," "loser pays" and the establishment of filing fees for arbitration services.

*Board's response:* The NMB has considered these suggestions carefully, in the context of incentives to reduce the current case backlog. The Board believes that the backlog is caused, to some extent, by the lack of incentives to process cases expeditiously. The Board believes that the proposed case resolution time frames will contribute significantly to the reduction of this backlog by creating financial incentives to expeditiously resolve cases. In addition, the Board believes that the parties have a responsibility to file and progress those cases having merit, and to consolidate as many grievances as possible that relate to the same underlying sets of facts, circumstances and issues. As such, the NMB is proposing to establish fees for certain arbitration services provided by the NMB. These fees, which represent only a very small portion of the actual costs of providing the respective services, are designed to encourage the parties to make the most efficient use of the NMB's program of arbitration services.

### C. Public Hearing

On November 26, 2003, the NMB published a notice in the **Federal Register** (68 FR 66500) inviting interested parties to a public hearing on the ANPRM. The public hearing was held on December 19, 2003 at the National Labor Relations Board hearing room. Two respondents requested to appear and speak before the Board. These commenters presented a summary of the various arguments previously presented to the NMB in their written submissions to the ANPRM. In general, these commenters well represented the divergence of opinion with respect to the NMB's proposal to amend its rules to further the processing of cases under the arbitration programs for which it is

statutorily responsible for administering.

The NMB's responses to the arguments of the parties appearing at the public hearing are discussed above, in the sections entitled "Board's responses."

#### D. Additional Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this NPRM. All comments must be in writing and must be submitted to the address indicated in the ADDRESSES section.

#### E. Regulatory Flexibility Act

The NMB does not expect this proposed rule to 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.* The NMB will consider comments from small entities concerning the effect of this proposal upon their operations in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, in correspondence.

#### F. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 29 CFR Part 1210

Administrative practice and procedure, Labor management relations.

Dated: August 2, 2004.

#### Roland Watkins,

National Railroad Adjustment Board  
Administrator.

Therefore, the National Mediation Board proposes to amend 29 CFR Chapter X by adding a new Part 1210 as set forth below:

### PART 1210—ADMINISTRATION OF ARBITRATION PROGRAMS—NATIONAL RAILROAD ADJUSTMENT BOARD (NRAB), PUBLIC LAW BOARDS (PLBs) AND SPECIAL BOARDS OF ADJUSTMENT (SBAs)

Sec.

- 1210.1 Scope and authority.
- 1210.2 Policy.
- 1210.3 Administrative responsibilities.
- 1210.4 Roster and status of arbitrators.
- 1210.5 Listing on the roster; criteria for listing and retention.
- 1210.6 Freedom of choice.
- 1210.7 Procedures for requesting arbitrators.
- 1210.8 Arbitrability.
- 1210.9 Consolidation of cases.

- 1210.10 Decision and award.
- 1210.11 Reports.
- 1210.12 Fees.

**Authority:** 44 Stat. 577, as amended; 45 U.S.C. 151–163

#### § 1210.1 Scope and authority.

This chapter is issued by the National Mediation Board (NMB) under the authority of section 3 of the Railway Labor Act (RLA), as amended, 45 U.S.C. 153. It applies to all arbitration proceedings conducted by the NRAB, as well as all PLBs and SBAs.

#### § 1210.2 Policy.

(a) The NMB administers, through the NRAB, PLBs, and SBAs, a program to resolve "minor disputes" in the railroad industry.

(1) When the NRAB is unable to resolve the dispute, the NMB, may designate a "referee" or "neutral" (herein after referred to as an "arbitrator") to resolve the matter.

(2) A PLB is comprised of a carrier and a union representative, as well as an arbitrator certified by the NMB.

(3) An SBA is comprised of a carrier and a union representative, as well as an arbitrator certified by the NMB.

(b) When the NMB designates an arbitrator to resolve the minor dispute, the RLA states that the NMB may pay the costs associated with the arbitrator's decision.

(c) While the NMB does not directly participate in the substantive decision-making process with respect to the NRAB, PLBs, and SBAs, the NMB has a responsibility to ensure the economy, efficiency and effective administration of the program through the expenditure of public funds.

#### § 1210.3 Administrative responsibilities.

(a) *National Mediation Board.* The NMB has responsibility for all aspects of NRAB, PLB, and SBA arbitration activities and is the final authority on all questions concerning the appointment of arbitrators. The NMB also has responsibility for all NMB procedures relating to the administration of arbitration programs requiring the expenditure of public funds.

(b) *Director of Arbitration Services/NRAB Administrator.* The NMB's Director of Arbitration Services (who also serves as the Administrator of the National Railroad Adjustment Board) maintains a Roster of Arbitrators; and assists and promotes the use of arbitrators by the NRAB, PLBs and SBAs. The Director of Arbitration Services cooperates with the respective Boards, and provides names or panels of names of listed arbitrators to parties requesting them.

(c) The NMB has responsibility for all aspects of the administrative processing of all cases at the NRAB and all records associated with PLBs and SBAs since these boards are established by the NMB.

#### § 1210.4 Roster and status of arbitrators.

(a) The Director of Arbitration Services shall maintain the NMB Roster of Arbitrators ("Roster") consisting of persons who meet the criteria for listing and who remain in good standing.

(b) *Adherence of standards and requirements.* Persons listed on the Roster shall comply with NMB standards and requirements pertaining to arbitration and with such guidelines and procedures as may be issued by the Director of Arbitration Services.

Arbitrators shall conform to the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor Management Disputes, as approved by the National Academy of Arbitrators and the American Arbitration Association.

(c) *Status of arbitrators.* Persons who are listed on the Roster and are selected or appointed to hear arbitration matters for the NRAB, PLBs, or SBAs do not become employees of the Federal Government by virtue of their selection or appointment. Following selection or appointment, the arbitrator's relationship is with the parties to the dispute, except that payment of arbitrators is the responsibility of the NMB, and certain financial and administrative requirements must be met by arbitrators in order to receive compensation from the NMB, and/or to be assigned cases.

(d) *Role of NMB.* With respect to arbitration services funded by the NMB pursuant to the Section 3 of the RLA, the NMB does not:

(1) Compel parties to appear before an arbitrator;

(2) Compel parties to arbitrate any issue; or

(3) Influence, alter, or set aside decisions of arbitrators on the Roster.

(e) *Nominations and panels.* On request of the NRAB, a PLB, or an SBA, the Director of Arbitration Services may appoint an arbitrator to hear a particular dispute.

(f) *Rights of persons listed on the Roster.* No person shall have any right to be listed or to remain listed on the Roster. The NMB retains its authority and responsibility to assure that the needs of the parties requesting its services are served. To accomplish this purpose, the NMB may establish procedures for the appointment of arbitrators which include consideration of such factors as background and

experience, availability, acceptability, geographical location, and the expressed preferences of the parties. The NMB may also establish procedures for the removal from the Roster of those arbitrators who fail to adhere to provisions contained in this part.

**§ 1210.5 Listing on the roster; criteria for listing and retention.**

(a) Persons seeking to be listed on the Roster must complete and submit an application form which may be obtained from the Director of Arbitration Services. Upon receipt of an executed application, the Director of Arbitration Services will review the application, assure that it is complete, and make such inquiries as are necessary. The Director of Arbitration Services, subject to the discretion of the NMB, shall make all final decisions as to whether an applicant may be listed on the Roster. Each applicant shall be notified in writing of his/her listing.

(b) *General criteria.* Applicants for the Roster will be listed on the Roster upon a determination that they are experienced, competent, and acceptable in decision-making roles in the resolution of labor disputes in the rail and airline industries.

(c) *Proof of qualification.* Qualifications for listing on the Roster may be demonstrated by submission of five (5) arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to labor disputes arising under collective bargaining agreements. The Director of Arbitration Services may consider experience in relevant positions in collective bargaining in the airline and/or railroad industries, or a relevant substitute(s) for such awards.

(d) *Advocacy.* Any person who at the time of application is an advocate as defined in paragraph (d)(1) of this section, must agree to cease such activity before being listed on the Roster.

(1) Definition of advocacy. An advocate is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant, in matters of labor relations, including but not limited to the subjects of union representation and recognition matters, collective bargaining, arbitration, unfair labor practices, equal employment opportunity, and other areas generally recognized as constituting labor relations. The definition includes representatives of employers or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters. This

definition of advocate also includes a person who is directly associated with an advocate in a business or professional relationship, as for example, partners or employees of a law firm. Consultants engaged only in joint education or training or other non-adversarial activities will not be considered as advocates.

(2) [Reserved]

(e) *Other circumstances precluding placement on the NMB's Roster of Arbitrators.* An individual will not be placed on the NMB's Roster if any one of the following disqualifying conditions is applicable:

(1) The individual is currently employed by the United States Government or is an employee of any State, municipal county or other governmental entity within the United States, its territories, protectorates or possessions. This disqualification applies to governmental employment in a full-time, part-time, *ad hoc*, per diem or other periodic capacity. Approval by the governmental employer for the individual to engage in arbitration will not lift or modify this restriction. The receipt of compensation from a governmental entity for service as an arbitrator, fact finder, or other neutral, or *ad hoc* service as an arbitrator in cases in which a governmental entity is a party, shall not constitute a disqualifying relationship for the purpose of this part.

(2) The individual is an employee, officer, trustee, director or otherwise is in a full-time or periodic employment relationship with any labor organization currently representing or seeking to represent employees under the RLA, any carrier subject to the RLA, or any company in which proceedings are pending alleging coverage under the RLA. Employment with any joint labor/management entity, or as an arbitrator, mediator, conciliator, ombudsman, member/trustee on any pension plan board, or similar service shall not constitute a disqualifying relationship for the purposes of this part.

(3) The individual is a partner, associate, employee, contractor or otherwise associated in a full-time or periodic employment relationship with any law firm, consulting firm, trade association, corporation, or other entity which advocates or seeks to advocate the partisan interests of any labor organization currently representing or seeking to represent employees under the RLA, any carrier subject to the RLA, or any company in which proceedings are pending alleging coverage under the RLA. Employment with any neutral institution such as the National Academy of Arbitrators, the American

Arbitration Association, or the Industrial Relations Research Association shall not constitute a disqualifying relationship for the purpose of this part.

(4) The individual is a partner, associate, member, employee, contractor or otherwise associated in a full-time or periodic employment relationship with any law firm, consulting firm, trade association, corporation, or other entity which provides or seeks to provide any partisan-oriented services in connection with labor-management relations in the United States or otherwise including, but not limited to, advocacy, advice, consultation, lobbying or related functions with respect to such services. Activities as an ombudsman, arbitrator, mediator, conciliator or other neutral, or service with any association thereof shall not constitute a disqualifying relationship for purposes of this part. Examples of such neutral associations include the National Academy of Arbitrators, the American Arbitration Association, and the Industrial Relations Research Association.

(5) The individual currently is suspended or disbarred from arbitral service following a determination in an appropriate forum that he or she violated the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

(6) The individual is not "wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties" as provided by 45 U.S.C. 155 Third. The individual is "pecuniarily or otherwise interested in any organization of employees or any carrier" as provided by 45 U.S.C. 160. Employment with any joint labor/management entity, or as an arbitrator, mediator, conciliator, ombudsman, member/trustee on any pension plan board, or similar service shall not constitute a disqualifying interest for the purposes of this part.

(7) The individual has failed to comply with the administrative requirements prescribed by the National Mediation Board in connection with the placement or maintenance on the NMB's Roster of arbitrators or other applicable NMB administrative requirements associated with the arbitration process.

(f) *Duration of listing, retention.* Listing on the Roster shall be by decision of the Director of Arbitration Services. The Director of Arbitration Services may remove any person listed on the Roster, for violation of this part. Notice of cancellation or suspension shall be given to a person listed on the Roster whenever a Roster member:

- (1) No longer meets the criteria for admission;
- (2) Has become an advocate as defined in paragraph (d) of this section;
- (3) Has been repeatedly or flagrantly delinquent in submitting awards;
- (4) Has refused to make reasonable and periodic reports in a timely manner to the NMB, as required, concerning activities pertaining to arbitration;
- (5) Has been the subject of complaints by parties, and the NMB after appropriate inquiry, concludes that just cause for cancellation has been shown;
- (g) The Director of Arbitration Services may suspend any person listed on the Roster who has violated any of the criteria in paragraph (e) of this section. Arbitrators shall be promptly notified of a suspension.

#### **§ 1210.6 Freedom of choice.**

Nothing contained in this part should be construed to limit the Members of the NRAB, of the PLBs or the SBAs, whose arbitrators are paid by the NMB, from selecting any arbitrator that is acceptable to them and is in good standing as determined by the Director of Arbitration Services. Once a request is made to the Director of Arbitration Services, all parties are subject to the procedures contained in § 1210.5.

#### **§ 1210.7 Procedures for requesting arbitrators.**

(a) The Director of Arbitration Services has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Director of Arbitration Services, National Mediation Board, 1301 K Street, NW., Suite 250, East, Washington, DC 20572.

(b) In accordance with Section 3 First, paragraph (l) of the RLA, the NMB, acting through the Director of Arbitration Services, will select an arbitrator to sit with the appropriate Division of the NRAB when the parties are unable or unwilling to agree to the appointment of an arbitrator.

(c) In accordance with Section 3 Second, of the RLA, the NMB, acting through the Director of Arbitration Services, will select an arbitrator to sit with the appropriate PLB when the parties are unable or unwilling to agree to the appointment of an arbitrator.

(d) The Director of Arbitration Services will select an arbitrator to sit with the appropriate SBA when the parties are unable or unwilling to agree to the appointment of an arbitrator.

(e) The Director of Arbitration Services reserves the right to decline to make a specific arbitrator appointment, if the request submitted by the parties

involves appointment of an arbitrator who is delinquent in the timely rendering of awards or decisions, or who is otherwise in violation of the NMB's administrative procedures for arbitrators.

(f) The appointment of an arbitrator by the NMB in no way signifies a determination on arbitrability or an interpretation of the terms and conditions of any collective bargaining agreement. The resolution of such disputes rests solely with the appropriate boards, the arbitrator, or the parties.

#### **§ 1210.8 Arbitrability.**

The Director of Arbitration Services will not decide the merits of a claim by either party that a dispute is not subject to arbitration.

#### **§ 1210.9 Consolidation of cases.**

The Director of Arbitration Services may consolidate the arbitration of minor disputes (*i.e.*, grievances) when he/she determines that this will serve the interests of economy and/or efficiency of the NMB's program for the administration of arbitration services under section 3 of the RLA, 45 U.S.C. 153.

#### **§ 1210.10 Decision and award.**

(a) The NMB's goal is to economically and efficiently dispose of arbitration cases. Accordingly, the NMB will only pay for arbitration services when the parties act in accordance with paragraphs (b) and (c) of this section.

(b) The NMB will only pay for arbitration of cases at the NRAB which are progressed according to the following schedule:

(1) Notice of Intent by a party is filed.

(2) Submissions by the parties shall be filed within 60 days of the date of the Director of Arbitration Services' letter acknowledging the Notice of Intent. The Director of Arbitration Services may permit a 15 day time extension, at his/her discretion.

(3) NRAB Members shall be given 30 days after receipt of the submissions to review the case with intent to resolve. Failing resolution, the case will be considered deadlocked.

(4) NRAB Members shall then be given 15 days to certify a case or cases to an arbitrator who must hear the case(s) within 60 days of the date of certification.

(5) If NRAB Members fail to certify a case in accordance with paragraph (b)(4) of this section, the Director of Arbitration Services will appoint an arbitrator within 15 days. The arbitrator shall hear the case within 60 days of the date of the Director's certification.

(6) After an arbitrator hears a case, a decision shall be rendered in no more than 60 days.

(c) The NMB will only pay for the arbitration of cases on PLBs and SBAs heard and decided within one year of the addition of the case to the Board.

(d) The following additional requirements are applicable to arbitrators paid by the NMB:

(1) Unless granted an extension by the Director of Arbitration Services, failure of the parties to follow the required schedule may result in the NMB's denial of payment to the arbitrator.

(2) A failure to render timely awards reflects upon the performance of an arbitrator and may lead to removal from the NMB's Roster.

(3) The parties shall inform the Director of Arbitration Services whenever a decision is unduly delayed. The arbitrator shall notify the Director of Arbitration Services if and when the arbitrator:

(i) Cannot schedule, hear, and render decisions promptly, or

(ii) Learns a dispute has been settled by the parties prior to the decision.

#### **§ 1210.11 Reports.**

Arbitrators shall execute and return all documents, forms and reports required by the Director of Arbitration Services. They shall also keep the Director of Arbitration Services informed of changes of address, telephone number, availability, and of any business or other connection or relationship which involves labor-management relations or which creates or gives the appearance of advocacy as defined in § 1210.5(d)(1).

#### **§ 1210.12 Fees.**

(a) The NMB may, from time to time, establish application fees for arbitration services. Notice of the establishment of fees, including the amount of any fee(s), shall be published in the **Federal Register**, as well as made available on the NMB's Web site (<http://www.nmb.gov>).

(b) For the purposes of paragraph (a) of this section, effective XX-XX-2005, the NMB's fee schedule for arbitration services is as follows:

(1) National Railroad Adjustment Board grievance filings—\$75.00 per notice of intent.

(2) Establishment of a public law board—\$100.00.

(3) Establishment of a special board of adjustment—\$100.00.

(4) Establishment of an arbitration board—\$100.00.

(5) Certification of an arbitrator to a public law board, special board of adjustment, arbitration board or any

division of the NRAB—\$50.00 per arbitrator certification.

(6) Request to add a case to an existing board—\$50.00 per case.

(7) Request for a panel of arbitrators—\$50.00 per request. The fee also applies to a request for a second panel.

(8) Designation of a partisan member for a public law board—\$75.00.

(9) Designation of a neutral member for a public law board—\$75.00.

(10) Appointment of an arbitrator for labor protective matters—\$75.00.

[FR Doc. 04-18133 Filed 8-6-04; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### 31 CFR Part 538, 550, and 560

#### Comment Request Regarding the Effectiveness of Licensing Procedures for Exportation of Agricultural Commodities, Medicine, and Medical Devices to Sudan, Libya, and Iran

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Request for comments.

**SUMMARY:** The Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury is soliciting comments concerning the effectiveness of OFAC’s licensing procedures implementing the Trade Sanctions Reform and Export Enhancement Act of 2000 (the “Act”), for the exportation of agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran. Pursuant to section 906(c) of the Act, OFAC is required to submit a biennial report to the Congress on the operation of licensing procedures for such exports.

**DATES:** Written comments should be received on or before September 8, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to the Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about these licensing procedures should be directed to the Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, telephone: (202) 622-2480. Additional information about these licensing procedures is also available under the heading “Sanctions Program and Country Summaries” at <http://www.treas.gov/ofac>.

**SUPPLEMENTARY INFORMATION:** The current procedures used by the Office of Foreign Assets Control (“OFAC”) for authorizing the export of agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran are set forth in 31 CFR 538.523 through 538.526, 31 CFR 550.569 through 550.573, and 31 CFR 560.530 through 560.533. Under the provisions of section 906(c) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX of Pub. L. 106-387, 22 U.S.C. 7201 *et seq.*) (the “Act”), OFAC must submit a report to the Congress on the operation, during the preceding two year period, of the licensing procedures required by section 906 of the Act for the export of agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran. This report is to include:

(1) The number and types of licenses applied for;

(2) The number and types of licenses approved;

(3) The average amount of time elapsed from the date of filing of a license application until the date of its approval;

(4) The extent to which the licensing procedures were effectively implemented; and

(5) A description of comments received from interested parties about the extent to which the licensing procedures were effective, after holding a public 30-day comment period.

This notice serves as public notice soliciting comments from interested parties regarding the effectiveness of OFAC’s licensing procedures for the export of agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran. Interested parties submitting comments are asked to be as specific as possible. All comments received on or before September 8, 2004 will be considered by OFAC in developing the report to the Congress. In the interest of accuracy and completeness, OFAC requires written comments. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. OFAC will not accept comments accompanied by a request that part or all of the comments be treated confidentially because of their business proprietary nature or for any other reason. OFAC will return such comments when submitted by regular mail to the person submitting the comments and will not consider them. All comments made will be a matter of public record. Copies of the public record concerning these regulations may be obtained from OFAC’s Web site (<http://www.treas.gov/>

*ofac*). If that service is unavailable, written requests may be sent to: Office of Foreign Assets Control, U.S. Department of Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, Attn: Merete Evans.

**Note:** Effective April 29, 2004, General License of April 23, 2004 and 31 CFR Part 550, Libya Sanctions Regulations (“LSR”), authorize U.S. persons to engage in most transactions previously prohibited by the LSR, including the exportation and reexportation of goods, software or technology by U.S. persons to Libya or the Government of Libya. Accordingly, specific licenses issued by OFAC for the export of agricultural commodities, medicine, and medical devices to Libya are no longer required pursuant to the LSR. This authorization does not, however, eliminate the need to comply with other provisions of law, including the Export Administration Regulations, 15 CFR parts 730 through 799, which are administered by the U.S. Department of Commerce.

Approved: July 27, 2004.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 04-17954 Filed 8-6-04; 8:45 am]

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## DEPARTMENT OF DEFENSE

### National Security Agency/Central Security Services

#### 32 CFR Part 322

[NSA Regulation 10-35]

#### Privacy Act; Implementation

**AGENCY:** National Security Agency/Central Security Services.

**ACTION:** Proposed rule.

**SUMMARY:** The National Security Agency/Central Security Services (NSA/CSS) is proposing to add an exemption rule for the system of records GNSA20, entitled ‘NSA Police Operational Files’. The exemptions increase the value of the system of records for law enforcement purposes.

**DATES:** Comments must be received on or before October 8, 2004 to be considered by this agency.

**ADDRESSES:** Send comments to the NSA/CSS Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755-6248.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne Hill at (301) 688-6527.

**SUPPLEMENTARY INFORMATION:**

*Executive Order 12866*

It has been determined that this Privacy Act rule for the Department of Defense does not constitute ‘significant