

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:** Interim final rule with request for comments.

SUMMARY: The Department of Labor is establishing a process for the election of representatives of the States to participate in formal consultations with the Department 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 recently 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. This provision requires that the representatives be elected by and from the employment statistics directors affiliated with State agencies designated to carry out employment statistics responsibilities under section 15 of the Wagner-Peyser Act. The interim final rule addresses the election cycles, the tenure of the representatives, the process for the distribution and tabulation of ballots, tie-breaking procedures, methods of transmitting ballots and votes, and the filling of vacancies.

DATES: Effective Date: This interim final rule is effective January 19, 1999.**Comments:** Comments are due on or before March 18, 1999.**ADDRESSES:** Send comments to Cheryl Kerr, Office of the Commissioner of the Bureau of Labor Statistics, Room 4044, Postal Square Building, 2 Massachusetts Avenue, NE Washington, DC 20212.**FOR FURTHER INFORMATION CONTACT:** Cheryl Kerr, Office of the Commissioner of the Bureau of Labor Statistics, Department of Labor, telephone 202-606-7808, FAX 202-606-7797.**SUPPLEMENTARY INFORMATION.****I. Background**

On August 7, 1998, the President signed into law the Workforce Investment Act of 1998. Section 309 of that Act amends section 15 of the Wagner-Peyser Act and assigns the

Secretary of Labor the responsibility to oversee the development, maintenance and continuous improvement of a nationwide system of employment statistics. The revised section 15(d) of the Wagner-Peyser Act specifies that, among other activities, the Secretary of Labor, working through the Bureau of Labor Statistics and in cooperation with the States, is to develop an annual employment statistics plan and address other employment statistics issues by holding formal consultations at least once each quarter. The consultations are to relate to the products and administration of the employment statistics system and are to be held with representatives from each of the 10 Federal regions of the Department elected (pursuant to a process established by the Secretary) by and from the directors of the State employment statistics agencies designated under the Wagner-Peyser Act.

II. Analysis of Regulations

Section 44.1 describes the purpose and scope of the regulations. These regulations pertain only to the process for electing the representatives of the States to conduct formal consultations with the Department of Labor. The regulations do not address the consultations themselves. In addition, this section identifies the statutory basis for the election process.

Section 44.2 describes the election cycle and tenure of the State agency representatives. The Department will hold the first election within 30 days after the effective date of these regulations. This section identifies five regions where the initial representatives will be elected for a term ending January 1, 2000 and where subsequent elections for representatives of those regions (beginning in the last quarter of 1999) will be for two-year terms. Those subsequent elections will be held biennially in the last quarter of the year. The representatives elected from the other five regions in the first election will be elected for a two-year term with subsequent elections (beginning in the last quarter 2000) held biennially in the last quarter of the year. The effect of these election cycles is to stagger the terms of the representatives. The purpose of staggered terms 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. This will provide important continuity to the consultation process while also allowing for appropriate turnover. The five regions identified in each category were selected to ensure that all turnover

does not occur in the same part of the country at the same time.

This section also provides that the terms of the representatives elected in the first election will commence immediately so as to facilitate the earliest possible consultation. Subsequently, the terms will commence January 1 of the year following the scheduled election. The section defines both the commencement of a term and the length of the two-year term by referring to the preceding "scheduled" election. Delays which prevent the election process from being completed in the last calendar quarter will not mean that those elected will serve any longer than if the election were completed within that quarter. No matter how long the election process may last, the election is deemed to be "scheduled" within the last calendar quarter, as provided in the regulations. Finally, this section provides that representatives may serve for an unlimited number of terms, thereby providing maximum discretion to the directors in each region in electing their representative.

Section 44.3 establishes the process by which the election will be conducted. The Commissioner of the Bureau of Labor Statistics (hereafter "the Commissioner") or his or her designee will conduct the election, consistent with the requirement of section 15(d)(2) of the Wagner-Peyser Act that the Secretary of Labor work through the Bureau of Labor Statistics in coordinating these employment statistics activities. The Commissioner will provide a ballot to each employment statistics agency director containing the names of all the agency directors in the appropriate region. If a State has failed to designate an agency pursuant to section 15(e) of the Wagner-Peyser Act, or has not provided the name of the employment statistics director to the Commissioner, the State will not be able to participate in the election. This section also provides that the Commissioner will establish a time period within which the votes are to be cast and that such time period will not be less than one week. The Commissioner then will tally all the votes received within the prescribed period and the director receiving the most votes will be the representative for the region. A plurality of votes will therefore be sufficient for election. If there is a tie after the first round of votes is counted, the Commissioner will carry out an additional round of voting using ballots containing only the names of the directors that tied with the most number of votes. If the tie remains after the second round, additional rounds of

voting will be repeated until a representative is elected.

This section also provides that the Commissioner may distribute ballots through electronic mail or other appropriate methods and may also specify the methods through which the directors are to cast their votes. Finally, this section provides that if a representative does not complete the term, the Commissioner will fill the vacancy by conducting an election using the voting process described above.

The Department believes that these regulations address the key issues relating to the election process. After the first elections and consultations are conducted, and after taking into consideration the comments received pursuant to this notice, the Department will consider whether these rules need to be modified or any additional rules need to be established.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553 (b)(3)(B), that good cause exists for waiving the public comment on this rule. Publication of a proposed rule is unnecessary since section 506(c)(1) of the Workforce Investment Act of 1998 (20 U.S.C. 9276(c)(1)) requires the Secretary to issue interim final regulations implementing the provisions of the Act.

Statutory Authority

The Department of Labor is publishing these rules under the authority provided in section 506(c)(1) of the Workforce Investment Act of 1998 (20 U.S.C. 9276(c)(1)). That section requires that the Secretary develop and publish in the **Federal Register** interim final regulations relating to the implementation of the Workforce Investment Act not later than 180 days after the date of enactment.

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 proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed 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.

Unfunded Mandates Reform Act of 1995

This rule 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 interim 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 interim 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 14th day of December, 1998.

Alexis M. Herman,
Secretary of Labor.

For the reasons stated in the preamble, the Department of Labor hereby amends subtitle A of title 29 of the Code of Federal Regulations by adding a new part 44 to read as follows:

PART 44—PROCESS FOR ELECTING STATE EMPLOYMENT STATISTICS AGENCY 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 *l*-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 *l*-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 herein, shall elect one representative in accordance with the procedures specified in these regulations. The initial election for representatives of the States from all 10 Federal regions will be held within 30 days after the effective date of these regulations. 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). For the representatives elected from the Federal regions where the principal office is located in New York City, Atlanta, Kansas City, Denver or Seattle, 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 where the principal office is located in Boston, Philadelphia, Dallas, Chicago and San Francisco, 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 the Bureau 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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