

Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

#### PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

**Authority.** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

*Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### ACE NE E5 Fairmont, NE [Revised]

Fairmont State Airfield, NE.

(Lat. 40°35'09" N, long. 97°34'23" W)

Beklof NDB

(Lat. 40°35'24" N, long. 97°34'05" W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Fairmont State Airfield and within 2.6 miles each side of the 189° bearing of the Beklof NDB extending from the 6.8-mile radius to 7 miles southeast of the airport.

\* \* \* \* \*

Issued in Kansas City, MO, on August 4, 1995.

**Herman J. Lyons,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 95–21681 Filed 8–30–95; 8:45 am]

BILLING CODE 4910–13–M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Ch. XIV

#### Older Workers Benefit Protection Act of 1990 (OWBPA)

**AGENCY:** Equal Employment Opportunity Commission (EEOC).

**ACTION:** Notice of Intent to form a Negotiated Rulemaking Advisory Committee to Develop a Proposed Rule: Request for representation.

**SUMMARY:** EEOC announces its intent to establish an OWBPA Negotiated Rulemaking Advisory Committee ("the Committee") under the Negotiated Rulemaking Act (NRA), the Federal Advisory Committee Act (FACA), and section 9 of the Age Discrimination in Employment Act of 1967, as amended (ADEA), 29 U.S.C. 628, to negotiate issues associated with the development

of a Notice of Proposed Rulemaking (NPRM) on Title II of OWBPA. The Committee will include representatives of the parties interested in, or affected by, the outcome of the proposed rule. EEOC requests that interested parties submit their requests for membership on the Committee.

**DATES:** EEOC must receive written requests for membership by October 2, 1995.

**ADDRESSES:** All written requests for Committee membership, and any comments on the rulemaking process, should be sent to: Executive Secretariat, EEOC, 1801 L Street, NW., Washington, DC 20507.

**FOR FURTHER INFORMATION CONTACT:** Joseph N. Cleary, Director, ADEA Division, Office of Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507 (202) 663–4690.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Congress amended the ADEA in 1990 to clarify the prohibitions against discrimination on the basis of age. In Title I of OWBPA, Congress addressed discrimination in employee benefits. Title II addressed waivers of rights and claims under the ADEA, amending section 7 of that Act by adding a new subsection (f). Title II expressly provided that unsupervised waivers may be valid and enforceable under the ADEA only if they meet certain enumerated requirements and are knowing and voluntary waivers of rights. EEOC intends to engage in rulemaking on certain Title II issues.

In light of the 1990 amendments to the ADEA, EEOC published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register**, 57 FR 10626 (March 27, 1992), seeking information from the public on various issues under Titles I and II of OWBPA. In response to the ANPRM, EEOC received approximately 40 comments, many of which presented detailed analyses of Title II issues, raising the possibility that EEOC should provide formal guidance on waivers of rights.

This Notice announces EEOC's intent to use negotiated rulemaking to develop a proposed Title II rule. It also sets forth basic concepts of negotiated rulemaking and outlines the criteria that EEOC expects to use in selecting the Committee and conducting the rulemaking. This Notice allows 30 days for interested parties to request appointment to the Committee.

##### II. Negotiated Rulemaking in General

The Administrative Conference of the United States (ACUS) has discussed

why negotiated rulemaking may alleviate certain problems associated with more traditional rulemaking procedures:

Experience indicates that if the parties in interest were to work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.

47 FR 30708 (June 18, 1982); 1 CFR 305.82–4.

There have been numerous effective uses of negotiated rulemaking procedures by such agencies as the Environmental Protection Agency, the Department of Transportation, and the Federal Aviation Administration. EEOC believes that the use of negotiated rulemaking procedures will meet the goals set out in the ACUS analysis, above, and adopts those goals by reference.

##### III. Justification for Use of Negotiated Rulemaking

In selecting Title II of OWBPA as a subject for negotiated rulemaking, EEOC has made the following determinations under criteria set out in the NRA:

- (1) There is a need for a rule;
- (2) There are a limited number of identifiable interests that will be significantly affected by the rule;
- (3) There is a reasonable likelihood that a Committee can be convened with a balanced representation of persons who:
  - (a) Can adequately represent the interests identified under paragraph (2), above; and
  - (b) Are willing to negotiate in good faith to reach a consensus on the proposed rule;
  - (4) There is a reasonable likelihood that the Committee will reach a consensus on the proposed rule within a reasonable fixed period of time;
  - (5) The procedure will not unreasonably delay the NPRM and the issuance of a final rule;
  - (6) EEOC has adequate resources and is willing to commit those resources, including technical assistance, to the Committee;
  - (7) EEOC, to the maximum extent possible consistent with its legal obligations and the need by EEOC Commissioners to review any draft rulemaking, will use the consensus of the Committee with respect to the proposed rule as the basis for the NPRM.

EEOC will follow all requirements set out in the ADEA, the Administrative

Procedures Act (APA), or any other statute with regard to rulemaking, including the need for a notice and comment period to permit members of the public to present their concerns regarding the NPRM. Nothing herein would deny Committee members the right to take part in the APA comment process.

In the event that EEOC does not receive requests for representation from a sufficient number of individuals or groups representing the affected interests, EEOC reserves the right to undertake rulemaking processes other than negotiated rulemaking.

#### IV. Issues for Negotiation

This list is for purposes of general notice only and is not intended to be either an exclusive or a mandatory list of issues. EEOC will work with the Committee to decide which of the issues listed, or other issues not listed, will be negotiated in the negotiated rulemaking process. EEOC welcomes comments from the public within the next 30 days with regard to possible issues to be considered by the Committee.

1. Section 7(f)(1)(F) of the ADEA mandates that an employee be given either 21 days or 45 days to decide whether or not to sign a waiver, depending upon whether the employer's action falls within the requirements of section 7(f)(1)(H). Is it necessary to restart the 21 or 45 day period if (a) a material modification is made to the waiver agreement and/or to the consideration offered by the employer; or (b) any modification is made to the waiver agreement?

2. May the 21, 45, and 7 day periods set out in section 7 of the ADEA be shortened by mutual consent of the parties? If so, what proof is necessary to determine if the time shortening is voluntary on the employee's part?

3. Section 7(f)(1)(H) of the ADEA contains notification requirements "if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees \* \* \*". Are the requirements in that section limited to voluntary separation programs, or would the requirements apply also to a waiver offered during an involuntary termination such as a reduction in force?

4. How should EEOC define such terms appearing in section 7(f)(1)(H) as "program", "class", "unit", "group", "job classification", and "organizational unit"?

5. Does the ADEA permit an employer to satisfy the notification requirements in section 7(f)(1)(H) by having the information available for any interested

employee in a central location, such as the employer's personnel office, or is it necessary for an employer to provide all relevant information to every affected employee?

6. What are the minimum requirements of "knowing and voluntary" where an employer and employee privately and independently settle a charge that has been filed with the EEOC?

7. What is meant by the language in section 7(f)(1)(D) of the ADEA allowing waivers "only in exchange for consideration in addition to anything of value to which the individual already is entitled"? May an employer that has previously given benefits (such as severance pay) without requiring a waiver of ADEA rights later change its policy or practice to require a waiver in exchange for such benefits?

8. What is the legal status of the consideration given for a waiver if EEOC finds that the waiver is invalid?

9. Is an employer required to offer more consideration for a waiver of rights by a person who is age 40 or over than is offered to a person under the age of 40?

#### V. Negotiation Procedures

The following proposed procedures and guidelines are based upon 5 U.S.C. 581 *et seq.*, and would apply to EEOC's process. These procedures and guidelines may be augmented or modified as a result of comments received in response to this Notice of Intent or during the negotiation process, within the parameters of applicable law.

##### A. Notice of Intent To Establish an OWBPA Negotiated Rulemaking Advisory Committee

For the reasons stated in previous sections, EEOC announces its intent to establish the Committee in accordance with the requirements of FACA and the General Services Administration (GSA) guidelines at 41 CFR 101-6.10 *et seq.*

##### B. Committee Notice

After evaluating the comments and requests received pursuant to this Notice, EEOC will issue a Committee Notice announcing the establishment of the Committee and the membership of the Committee. The Committee membership roster will be published in the **Federal Register**.

##### C. Interests Involved

(1) EEOC has tentatively identified the following interests as ones that may wish to participate in the negotiations through their representatives:

- \* Groups assisting older persons.
- \* Large and small employers.

- \* Labor organizations.
- \* State and local governments.
- \* Bar organizations.
- \* Institutions of higher education.

(2) One purpose of this Notice of Intent is to determine whether the rulemaking would substantially affect any interests that are not listed above. EEOC is willing to expand the list of affected interests based upon comments received. EEOC believes that affected interests should be represented on the Committee and that the Committee have balanced representation.

##### D. Participants

The Committee is not likely to exceed 20 participants, including EEOC's representatives on the Committee. If a smaller number of participants can represent effectively the interests affected by the rulemaking, EEOC will structure a smaller Committee.

It is expected that Committee members will have substantial expertise in the technical aspects of Title II of OWBPA and the concerns of employers and older employees with respect to rights and obligations under the ADEA. Persons interested in being appointed as members of the Committee should detail their experience and qualifications, the interest(s) they wish to represent, and how those interest(s) would be affected by the rule.

##### E. Good Faith Negotiation

Participants should be willing to negotiate in good faith in an effort to reach an appropriate consensus on the issues involved in the rulemaking.

##### F. Facilitators

The Federal Mediation and Conciliation Service will provide two Facilitators for this rulemaking. Their role is to help the negotiation process to run smoothly, assist participants reach consensus, chair the actual negotiations, and determine the feasibility of negotiating particular issues. Other duties may be added during the negotiating process.

##### G. EEOC Representatives

The EEOC representatives will be full and active participants in the consensus building negotiations. EEOC also will provide the Committee with necessary support personnel and technical resources, to the extent feasible.

##### H. Meeting Schedule

Once the Committee has been selected, EEOC will, after consultation with the Committee members, publish in the **Federal Register** the date of the first meeting. The first meeting will be held at EEOC Headquarters, 1801 L

Street, NW., Washington, DC, and it is anticipated that all future meetings will also be held at that address. At that first meeting, the Committee will focus upon procedural matters and protocols, including dates, times, and locations of future meetings; identification of the principal issues for resolution; and a target date for the completion of the NPRM.

In order to prevent delay in the preparation of guidance under Title II of OWBPA, EEOC intends to terminate the Committee's activities no later than 180 days after the date of the first meeting, unless circumstances call for extending the deadline.

#### *I. Committee Procedures*

Committee meetings will be conducted in accordance with the requirements of FACA, which provides for filing a Committee Charter with GSA and appropriate Congressional committees, meetings open to the public, filing of written statements by interested persons before or after meetings, presentation of oral statements where time permits, and retention of meeting records.

Committee meetings will be announced in the **Federal Register**. The Committee will establish the detailed procedures for its meetings.

#### *J. Records of Meetings*

In accordance with FACA, EEOC will keep minutes of all Committee meetings and will place these minutes in the public rulemaking docket.

#### *K. Definition of Consensus*

The goal of the negotiation process is "unanimous concurrence among the interests represented." 5 U.S.C. 582(2). EEOC expects Committee members to establish their own working definition of the term "consensus."

Dated: August 28, 1995.

**Gilbert F. Casellas,**

*Chairman.*

[FR Doc. 95-21654 Filed 8-30-95; 8:45 am]

BILLING CODE 6570-06-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 95-135; RM-8681]

#### Radio Broadcasting Services; Honor, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Jacqueline F. Bourgard, proposing the allotment of Channel 264A to Honor, Michigan, as that community's first local service. There is a site restriction 3 kilometers (1.8 miles) north of the community. Canadian concurrence will be requested for this allotment at coordinates 44-41-26 and 86-01-05.

**DATES:** Comments must be filed on or before October 19, 1995, and reply comments on or before November 3, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jacqueline F. Bourgard, P.O. Box 365, Mesick, Michigan 49668.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-135, adopted August 16, 1995, and released August 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. 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, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 95-21613 Filed 8-30-95; 8:45 am]

BILLING CODE 6712-01-F

### 47 CFR Part 73

[MM Docket No. 95-136; RM-8682]

#### Television Broadcasting Services; Sioux Falls, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Red River Broadcast Corp. ("RRBC"), proposing the allotment of UHF television Channel 46 at Sioux Falls, South Dakota, as potentially the community's sixth local television broadcast service. If the channel is allotted with cut-off protection, petitioner also requests that RRBC be allowed to amend its pending application for UHF television Channel 36+ at Sioux Falls to reflect operation on the new channel. Channel 46, with zero offset, can be allotted to Sioux Falls in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 46 at Sioux Falls are North Latitude 43-32-30 and West Longitude 96-44-00.

**DATES:** Comments must be filed on or before October 19, 1995 and reply comments on or before November 3, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John T. Scott, III, Esq., Crowell & Moring, 1001 Pennsylvania Ave., NW., Washington, DC 20004 (Counsel for Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-136, adopted August 18, 1995, and released August 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.