

Proposed Rules

Federal Register

Vol. 67, No. 129

Friday, July 5, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR-4676-N-04]

Indian Housing Block Grant Allocation Formula: Second Notice of Intent To Establish a Negotiated Rulemaking Committee; Second Request for Nominations; Clarification of Selection Criteria; and Announcement of Nominees

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Second notice of intent to establish a negotiated rulemaking committee; request for comments.

SUMMARY: HUD again announces its intent to establish a negotiated rulemaking committee for the purpose of negotiating a proposed rule that would revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. HUD first published a notice of intent to establish a negotiated rulemaking committee, but due to the events of September 11, 2001, HUD was not able to act on this notice within the timeframes originally intended, and is therefore publishing a second notice.

This notice therefore: Again advises the public of the establishment of the committee; provides the public with information regarding the committee; again solicits nominations for selection to the committee; explains the nomination procedures and criteria that will be used to select members of the committee; announces the names of those who successfully completed applications under the original notice; and announces the tentative dates for the first meeting of the committee.

DATES: *Comment Due Date:* August 5, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding the Committee and its proposed members to the Office of the Rules

Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Key, Acting Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4126, 451 Seventh Street, SW., Washington, DC 20410-0500; telephone (202) 401-7914 (this number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 1998 (63 FR 12349), HUD published its final rule implementing the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized the system of Federal housing assistance to Native Americans by eliminating several separate HUD programs of assistance and replacing them with a single Indian Housing Block Grant (IHBG) Program. In addition to simplifying the process of providing housing assistance, NAHASDA provides Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance. As required by NAHASDA, HUD developed the March 12, 1998 final rule with active tribal participation and used the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570). The March 12, 1998, final rule created a new 24 CFR part 1000 containing the regulations for the IHBG Program.

Under the IHBG Program, HUD makes assistance available to tribes for Indian housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of the formula is

located in subpart D of 24 CFR part 1000 (§§ 1000.301-1000.340). Generally, the amount of funding for a tribe is the sum of the formula's Need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG Program, HUD calculates the annual grant for each tribe and conveys this information to Indian tribes. An Indian Housing Plan (IHP) for the tribe is then submitted to HUD. If the IHP is found to be in compliance with statutory and regulatory requirements, the grant is made. In Federal fiscal year 2001, HUD allocated approximately \$643.4 million to Indian tribes.

Section 1000.306 of the IHBG Program regulations provides that the allocation formula shall be reviewed within five years after issuance. This 5-year period does not close until March 2003. However, the recently enacted Omnibus Indian Advancement Act (Pub. L. 105-568, approved December 27, 2000) (Omnibus Act) makes several statutory changes to the IHBG allocation formula that HUD has decided to implement through rulemaking. Accordingly, HUD believes this would be an appropriate time to revisit the IHBG formula and to determine whether any changes, in addition to those mandated by the Omnibus Act, should be made to 24 CFR part 1000, subpart D.

The Omnibus Act made two statutory changes concerning allocations under the IHBG formula. First, section 1003(g) of the Omnibus Act amends section 302(d)(1) of NAHASDA to address the allocation of funds for operation and modernization of housing units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) to tribes with an Indian housing authority that owns or operates fewer than 250 units. Further, section 1003(k)(3) of the Omnibus Act amends section 502(a) of NAHASDA to provide that any housing that was subject to a terminated contract for tenant-based assistance under the 1937 Act shall be treated as a dwelling unit for purposes of section 302(b)(1) of NAHASDA (which establishes the factors for determination of need under the IHBG formula).

II. Negotiated Rulemaking

HUD intends to establish a negotiated rulemaking committee for the purpose of reviewing HUD's regulations for the IHBG formula (24 CFR part 1000, subpart D), and negotiating recommendations for a possible proposed rule modifying the formula. The committee membership will consist of elected officers of tribal governments (or authorized designees of those tribal governments) with a definable stake in the outcome of a proposed rule. The committee would be established, and conduct its work, in accordance with the procedures of the Negotiated Rulemaking Act of 1990.

The basic concept of negotiated rulemaking is to have the agency that is considering drafting a rule to bring together representatives of affected interests for face-to-face negotiations. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems. The establishment of the negotiated rulemaking committee will offer Indian tribal governments the opportunity to have input into any changes determined to be necessary to improve the distribution of funds under the IHBG formula.

The use of negotiated rulemaking procedures in this matter is consistent with the statutory goal of NAHASDA to respect the rights of Indian self-determination and tribal self-governance. Negotiated rulemaking also conforms to the consultation requirements of Executive Order 13175, entitled "*Consultation and Coordination with Indian Tribal Governments*," issued on November 6, 2000 (the Order was published in the **Federal Register** on November 9, 2000 at 65 FR 67249). Executive Order 13175 requires that Federal agencies establish regular and meaningful collaboration with Indian tribal officials in the development of Federal policies that have tribal implications.

Section 564 of the Negotiated Rulemaking Act of 1990 requires that an agency, prior to the establishment of a negotiated rulemaking committee, publish a notice in the **Federal Register** announcing its intent to establish the committee, provide certain information regarding the formation of the committee, and solicit nominations for selection to the committee. The purpose of this notice is to implement the requirements of section 564.

III. Committee Membership

HUD's goal is to develop a committee whose membership reflects a balanced

representation of Indian tribes. NAHASDA acknowledges the government-to-government relationship that exists between the Federal Government and federally-recognized Indian tribes. In furtherance of this fundamental principle, membership on the committee shall be limited to elected officers of tribal governments (or authorized designees of those tribal governments). After receiving comments that the size of the committee should be increased, HUD has determined that a total of 24 tribal representatives will fairly represent the wide range of diverse interests needed. Two HUD representatives will represent the interests of the Federal Government. HUD will pay travel and per diem costs on an as-needed basis.

Comments were received in response to the original notice stating that the definition of "small, medium and large tribe" was unclear. The Department determined that it was unnecessary to strictly define these terms in the original notice, as most tribes can calculate for themselves where their interests lie within these categories. That determination remains the case. In general, the Department will use guidelines that consider tribes with under 250 affordable housing units in management as small, those with between 250 and 500 units as medium, and those with over 500 units in management as large.

In response to the original notice on this subject published on July 16, 2001 (66 FR 37098), HUD received a total of 44 nominations to the committee. Approximately one-half of the nominees provided complete applications. The Department wrote to all nominees in November, 2001, informing those with complete applications that they would be considered for membership on the committee unless HUD was informed by them that they were no longer interested, and requesting those with incomplete applications to provide the missing information identified in the letter within 30 days. Due to mail service delays caused by events beyond the control of either the Department or the nominees, replies from some nominees have taken longer than 60 days to be received. HUD will be extremely flexible in accepting information from these nominees. To date, approximately one-half of those with missing information have replied to the letters. The Department will continue to accept mail replies containing this information as it arrives, or until the deadline for submission of the second round of applications, whichever is later.

Listed below are the names of the nominees with complete applications. They represent the first round of successful candidates. Under this notice, HUD is also announcing that, in the Department's opinion, the interests represented by successful candidates do not constitute sufficient geographic distribution or diversity. Therefore, the Department is soliciting additional applications for a second and final nomination process. HUD will review all applications received under criteria identical to the original notice, and again afford those with incomplete or otherwise deficient applications the opportunity to provide the missing or incomplete information. HUD will notify those nominees by letter. After the deadline has passed for submission of missing or incomplete information, the Department will select participants from a consolidated list of both the original and second-round nominees. No distinctions will be made between original and second-round nominees when final selections are made.

First-round nominees whose names are not listed below may reapply under this notice and will be given equal consideration to that given to other nominees. No additional opportunities to apply for participation on the committee will occur.

The successful nominees are: Sabrina Jacobs, Bruce LaPointe, Grace Bunner, Glenn Edwards, Russell Sossamon, Robert Carlile, Jefferson Keel, Marvin Jones, Robert Gauthier, Wayne Ducheneaux, Miles McAllister, Gillard White, Jack Sawyers, Darlene Tooley, Michael Reed, Phil Bush, Dennis Jose, Judith Marasco, Larry Coyle, Tim King, Herb Johns, Dale Jones, Virginia Brings Yellow, Elena Bassett, David Frey, Don Kashevaroff, Blake Kazama, Delbert Rexford, Carol Gore, Marty Shuravloff, Myron Naneg.

Section IV of this notice establishes criteria for nominating individuals with the requisite experience and expertise, representing a wide range of interests (including geographically diverse small, medium and large tribes) that are willing and able to work within a consensus framework, on determining the need to revise the IHBG allocation formula.

Comments were received that the "experience" criterion was exclusionary, as it required an applicant to have served as a member of a board of commissioners of a housing authority or housing entity, or as a board member of another tribal organization. We wish to clarify that an employee of a tribe, housing authority or housing entity, or other organization is eligible for membership, so long as that person

meets other requirements and provides evidence that they are authorized to represent the interests of the tribe or tribes which the person purports to represent. The phrase "or other relevant experience" has been added to clarify the intent of this criterion.

HUD invites interested persons and organizations to submit nominations for members of this committee. HUD will review the nominations submitted for committee membership to ensure that those selected will reflect the diversity of tribes in terms of size, location, and special circumstances. After review of all the nominations, HUD will publish a notice in the **Federal Register** announcing its proposed list of committee members, and soliciting public comment on the proposed membership.

HUD does not believe that each potentially affected tribe must have its own representative. However, HUD must be satisfied that the group as a whole reflects a proper balance and mix of interests. Negotiation sessions will be open to members of the public, so individuals and organizations that are not members of the committee may attend all sessions and communicate informally with members of the committee.

IV. Nominations for Committee Membership

Interested persons and organizations may nominate persons for committee membership by submitting a written nomination to HUD at the address listed in the **ADDRESSES** section of this notice no later than August 5, 2002. Nominations for membership on the committee must include:

1. The name and address of the nominee and a description of the interests such person shall represent;
2. Evidence that the nominee is authorized to represent a tribal government or group of tribal governments related to the interests the person proposes to represent;
3. A written commitment that the nominee shall actively participate in good faith in the development of the rule under consideration; and
4. A written statement indicating how the nominee meets the following five selection criteria:
 - The nominee is an elected tribal officer, or is otherwise authorized by the tribal government to act on the tribe's behalf during the negotiated rulemaking sessions;
 - The nominee has demonstrated housing experience as a member of the board of commissioners of a housing authority or housing entity, or other

organization, or other relevant experience;

- Selection of the nominee will help to ensure the committee contains an appropriate balance of representatives from small, medium and large Indian tribal governments;
- Selection of the nominee will ensure the geographic diversity of the committee membership; and
- The nominee has demonstrated ability to analyze and extrapolate complex data.

V. Final Committee Membership

After reviewing any comments on this notice and all nominations for membership, HUD will issue a follow-up **Federal Register** notice. That notice will announce HUD's proposed list of negotiated rulemaking committee members, and provide the public with an opportunity to comment on the proposed membership. HUD will announce the final composition of the negotiated rulemaking committee in a subsequent **Federal Register** notice.

VI. Tentative Schedule

At this time, HUD's tentative plan is to hold the first committee meeting on January 14 and 15, 2003, at the Denver Marriott City Center, 1701 California Street, Denver, CO 80202. The purpose of the meeting will be to orient members to the negotiated rulemaking process, to establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and to begin to address the issues. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter.

Advance notice of committee meetings will be published in the **Federal Register**. Meetings of the negotiated rulemaking committee will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be provided the opportunity to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. In the event that the date and time of these meetings is changed, HUD will advise the public through **Federal Register** notice.

VII. Applicability of the Federal Advisory Committee Act (FACA)

Comments were received about the applicability of FACA. The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) do not apply to this negotiated rulemaking committee. In accordance with section 204(b) of the

Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, approved March 22, 1995), FACA is not applicable to consultations between the Federal government and elected officers of Indian tribal governments (or their designated employees with authority to act on their behalf).

The Office of Management and Budget (OMB) issued guidelines implementing section 204(b). The OMB guidelines interpret the exemption broadly to include State, local, or tribal representatives with the authority to act on behalf of the State, local, or tribal government, regardless of their actual employment status. As the OMB guidelines provide:

In accordance with the legislative intent, the exemption should be read broadly to facilitate intergovernmental communications on responsibilities or administration. This exemption applies to meetings between Federal officials and employees and State, local or tribal governments acting through their elected officers, officials, employees, and Washington representatives, at which 'views, information, or advice' are exchanged concerning the implementation of intergovernmental responsibilities or administration, including those that arise explicitly or implicitly under statute, regulation, or Executive Order. The scope of meetings covered by this exemption should be construed broadly to include meetings called for any purpose relating to intergovernmental responsibilities or administration. Such meetings include, but are not limited to, meetings called for the purpose of seeking consensus, exchanging views, information, advice, and/or recommendations; or facilitating any other interaction relating to intergovernmental responsibilities or administration. (OMB Memorandum 95-20 (September 21, 1995), pp. 6-7, published at 60 FR 50651, 50653 (September 29, 1995)).

Additionally, on July 10, 2001 (66 FR 37728), the General Services Administration (GSA) updated its regulations governing Federal Advisory Committee Management, and in these regulations, the GSA codified the OMB guidance issued in 1995. GSA's regulations at 41 CFR 102-3.40 provide that FACA does not apply to committees composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. The GSA provides that FACA does not apply to these groups with the following qualification:

However, the purpose of such a committee must be solely to exchange views, information or advice relating to the management or implementation of Federal programs established pursuant to statute, that

explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M-95-20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405-0002).

That FACA may not apply to this negotiated rulemaking committee does not necessarily mean that HUD, or HUD and the committee members, would decide not to apply FACA voluntarily. Additional comments on this issue are welcome.

Dated: June 27, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02-16766 Filed 7-3-02; 8:45 am]

BILLING CODE 4210-33-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-1480, MB Docket No. 02-02-152, RM-10457]

Television Broadcast Service; Wiggins, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KB Prime Media LLC, an applicant for a construction permit for a new television station to operate on channel 56 at Wiggins, Mississippi, proposing the substitution of channel 46- for channel 56 at Wiggins. TV Channel 46- can be allotted to at reference coordinates 30-32-32 N. and 89-10-40 W.

DATES: Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The

Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, 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: David D. Oxenford, Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037-1128 (Counsel for KB Prime Media LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02-152, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

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* contacts.

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

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Mississippi, is amended by removing Channel 56+ and adding Channel 46- at Wiggins.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02-16867 Filed 7-3-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-1479, MB Docket No. 02-151, RM-10453]

Digital Television Broadcast Service; Yuma, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Arizona Western College proposing the allotment of DTV channel 24 at Yuma, Arizona, as the community's first local noncommercial DTV allotment. DTV Channel *24 can be allotted to Yuma at reference coordinates 32-56-57 N. and 114-36-46 W. with a power of 540, a height above average terrain HAAT of 490 meters. Since the community of Yuma is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper