

§ 1320.12

5 CFR Ch. III (1–1–07 Edition)

(1) As provided in §1320.5(b) and §1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

§ 1320.12 Clearance of collections of information in current rules.

Agencies shall submit collections of information contained in current rules that were published as final rules in the FEDERAL REGISTER in accordance with the following procedures:

(a) In the case of a collection of information contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(1) Conduct the review established under §1320.8, including the seeking of public comment under §1320.8(d); and

(2) After having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of information, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(b)(1) In the case of a collection of information contained in a published current rule that was not required to be submitted for OMB review under the Paperwork Reduction Act at the time the collection of information was made part of the rule, but which collection of information is now subject to the Act and this part, the agency shall:

(i) Conduct the review established under §1320.8, including the seeking of public comment under §1320.8(d); and

(ii) After having made a reasonable effort to seek public comment, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of infor-

mation while the submission is pending at OMB. In the case of a collection of information not previously approved, approval shall be granted for such period, which shall not exceed 60 days, unless extended by the Director for an additional 60 days, and an OMB control number assigned. Upon assignment of the OMB control number, and in accordance with §1320.3(f) and §1320.5(b), the agency shall display the number and inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(c) On or before the day of submission to OMB under paragraphs (a) or (b) of this section, the agency shall, in accordance with the requirements set forth in §1320.5(a)(1)(iv), forward a notice to the FEDERAL REGISTER stating that OMB review is being sought. The notice shall direct requests for copies of the collection of information and supporting documentation to the agency, and shall request that comments be submitted to OMB within 30 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the FEDERAL REGISTER, together with the date of expected publication, shall be included in the agency's submission to OMB.

(d) Within 60 days after receipt of the collection of information or publication of the notice under paragraph (c) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under §1320.13.

(e)(1) Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. OMB shall not approve any collection of information for a period longer than three years. Approval of any collection

of information submitted under this section will be for the full three-year period, unless OMB determines that there are special circumstances requiring approval for a shorter period.

(2) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall assign without further delay, an OMB control number that shall be valid for not more than one year.

(3) As provided in §1320.5(b) and §1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(f)(1) If OMB disapproves a collection of information contained in an existing rule, or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, OMB shall:

(i) Publish an explanation thereof in the FEDERAL REGISTER; and

(ii) Instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under §1320.10 or §1320.11, as appropriate; and

(iii) Extend the existing approval of the collection of information (including an interim approval granted under paragraph (b) of this section) for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under §1320.10 or §1320.11, as appropriate.

(2) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the

FEDERAL REGISTER. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, change, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of the above in the FEDERAL REGISTER and submission to OMB shall initiate OMB clearance procedures under section 3507(d) of the Act and §1320.11. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

(g) OMB may disapprove, in whole or in part, any collection of information subject to the procedures of this section, if the agency:

(1) Has refused within a reasonable time to comply with an OMB instruction to submit the collection of information for review;

(2) Has refused within a reasonable time to initiate procedures to change the collection of information; or

(3) Has refused within a reasonable time to publish a final rule continuing the collection of information, with such changes as may be appropriate, or otherwise complete the procedures for amendment or rescission of the collection of information.

(h)(1) Upon disapproval by OMB of a collection of information subject to this section, except as provided in paragraph (f)(1)(iii) of this section, the OMB control number assigned to such collection of information shall immediately expire, and no agency shall conduct or sponsor such collection of information. Any such disapproval shall constitute disapproval of the collection of information contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting information collection instruments directed at the same collection of information and therefore constituting essentially the same collection of information.

(2) The failure to display a currently valid OMB control number for a collection of information contained in a current rule, or the failure to inform the potential persons who are to respond to the collection of information that such

§ 1320.13

5 CFR Ch. III (1–1–07 Edition)

persons are not required to respond to the collection of information unless it displays a currently valid OMB control number, does not, as a legal matter, rescind or amend the rule; however, such absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information has been disapproved, and that therefore the portion of the rule containing the collection of information has no legal force and effect and the public protection provisions of 44 U.S.C. 3512 apply.

(i) Prior to the expiration of OMB's approval of a collection of information in a current rule, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this Part.

§ 1320.13 Emergency processing.

An agency head or the Senior Official, or their designee, may request OMB to authorize emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that:

(1) The collection of information:

(i) Is needed prior to the expiration of time periods established under this Part; and

(ii) Is essential to the mission of the agency; and

(2) The agency cannot reasonably comply with the normal clearance procedures under this part because:

(i) Public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) An unanticipated event has occurred; or

(iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a stat-

utory or court ordered deadline to be missed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) The agency shall set forth in the FEDERAL REGISTER notice prescribed by § 1320.5(a)(1)(iv), unless waived or modified under this section, a statement that it is requesting emergency processing, and the time period stated under paragraph (b) of this section.

(e) OMB shall approve or disapprove each such submission within the time period stated under paragraph (b) of this section, provided that such time period is consistent with the purposes of this Act.

(f) If OMB approves the collection of information, it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

§ 1320.14 Public access.

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. Notwithstanding other provisions of this Part, and to the extent permitted by law, requirements to publish public notices or to provide materials to the public may be modified or waived by the Director to the extent that such public participation in the approval process would defeat the purpose of the collection of information; jeopardize the confidentiality of proprietary, trade secret, or other confidential information; violate State or Federal law; or substantially interfere with an agency's ability to perform its statutory obligations.

(b) Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

(c) Any person may request OMB to review any collection of information