

CFR 1320.12

§ 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 information 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 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.

HISTORY: [53 FR 16623, May 10, 1988; 60 FR 44978, 44992, Aug. 29, 1995]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
31 U.S.C. Sec. 1111 and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:

Title 5 of the United States Code was revised and enacted into positive law by Public Law 89-554, Sept. 6, 1966. New citations for obsolete references to sections of 5 U.S.C. appearing in this title may be found in a redesignation table under title 5, Government Organization and Employees, United States Code.