

44 USCS § 3507

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§ 3507. Public information collection activities; submission to Director; approval and delegation

(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information--

(1) the agency has--

(A) conducted the review established under section 3506(c)(1) [44 USCS § 3506(c)(1)];

(B) evaluated the public comments received under section 3506(c)(2) [44 USCS § 3506(c)(2)];

(C) submitted to the Director the certification required under section 3506(c)(3) [44 USCS § 3506(c)(3)], the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

(D) published a notice in the Federal Register--

(i) stating that the agency has made such submission; and

(ii) setting forth--

(I) a title for the collection of information;

(II) a summary of the collection of information;

(III) a brief description of the need for the information and the proposed use of the information;

(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

(V) an estimate of the burden that shall result from the collection of information; and

(VI) notice that comments may be submitted to the agency and Director;

(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except as provided under subsection (j).

(c) (1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

(3) If the Director does not notify the agency of a denial or approval within the 60-day period described under paragraph (2)--

(A) the approval may be inferred;

(B) a control number shall be assigned without further delay; and

(C) the agency may collect the information for not more than 1 year.

(d) (1) For any proposed collection of information contained in a proposed rule--

(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;

(2) When a final rule is published in the Federal Register, the agency shall explain--

(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

(B) the reasons such comments were rejected.

(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.

- (4) No provision in this section shall be construed to prevent the Director, in the Director's discretion--
- (A) from disapproving any collection of information which was not specifically required by an agency rule;
 - (B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;
 - (C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule that the agency's response to the Director's comments filed under paragraph (2) of this subsection was unreasonable; or
 - (D) from disapproving any collection of information contained in a final rule, if--
 - (i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and
 - (ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.
- (5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.
- (6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.
- (e) (1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.
- (2) Any written communication between the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs, and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.
- (3) This subsection shall not require the disclosure of--
- (A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or
 - (B) any communication relating to a collection of information which is not approved under this subchapter [44 USCS § § 3501 et seq.], the disclosure of which could lead to retaliation or discrimination against the communicator.
- (f) (1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void--
- (A) any disapproval by the Director, in whole or in part, of a proposed collection of information of that agency; or
 - (B) an exercise of authority under subsection (d) of section 3507 [44 USCS § 3507] concerning that agency.
- (2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.
- (g) The Director may not approve a collection of information for a period in excess of 3 years.
- (h) (1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall--
- (A) conduct the review established under section 3506(c) [44 USCS § 3506(c)], including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and
 - (B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.
- (2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall--
- (A) publish an explanation thereof in the Federal Register; and
 - (B) 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 this subchapter [44 USCS § § 3501 et seq.].

(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this subchapter [44 USCS § § 3501 et seq.].

(i) (1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, *United States Code* [5 USCS § § 500 et seq.], delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

(j) (1) The agency head may request the Director to authorize a collection of information, if an agency head determines that--

(A) a collection of information--

(i) is needed prior to the expiration of time periods established under this subchapter [44 USCS § § 3501 et seq.]; and

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

(B) the agency cannot reasonably comply with the provisions of this subchapter [44 USCS § § 3501 et seq.] 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 statutory or court ordered deadline to be missed.

(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this subchapter [44 USCS § § 3501 et seq.] for a maximum of 180 days after the date on which the Director received the request to authorize such collection.

HISTORY:

(Added May 22, 1995, P.L. 104-13, § 2, 109 Stat. 176; Feb. 10, 1996, P.L. 104-106, Div E, Title LVI, § 5605(d), 110 Stat. 700; Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The amendment made by § 1 of Act Oct. 30, 2000, P.L. 106-398, is based on § 1064(b) of Subtitle G of Title X of Division A of H.R. 5408 (114 Stat. 1654A-275), as introduced on Oct. 6, 2000, which was enacted into law by such § 1.

A prior § 3507 (Act Dec. 11, 1980, P.L. 96-511, § 2(a), 94 Stat. 2819; Oct. 18, 1986, P.L. 99-500; Oct. 30, 1986, P.L. 99-591, Title I, § 101(m), 100 Stat. 3341-338) was omitted in the general revision of this chapter by Act May 22, 1995, P.L. 104-13, § 2, 109 Stat. 163, effective as provided by § 4 of such Act, which appears as 44 USCS § 3501 note. The prior section provided for public information collection activities; submission to the Director; approval and delegation.

Another prior § 3507 (Act Oct. 22, 1968, P.L. 90-620, § 1, 82 Stat. 1304), which provided for the cooperation of agencies in making information available, was omitted in the general revision of this chapter by Act Dec. 11, 1980, P.L. 96-511, § 2(a), 94 Stat. 2812, effective April 1, 1981, as provided by § 5 of such Act.

Effective date of section:

This section became effective on October 1, 1995, with certain exceptions, as provided by § 4 of Act May 22, 1995, P.L. 104-13, which appears as *44 USCS § 3501* note.

Amendments:

1996. Act Feb. 10, 1996 (effective 180 days after enactment, as provided by § 5701 of such Act, and subject to savings provisions and rules of construction set out in §§ 5702 and 5703 of such Act), in subsec. (j)(2), substituted "180 days" for "90 days".

2000. Act Oct. 30, 2000 (effective 30 days after enactment, as provided by § 1065 of H.R. 5408, as enacted into law by such Act, which appears as *44 USCS § 3531* note), substituted "this subchapter" for "this chapter" wherever appearing.

NOTES:

Code of Federal Regulations:

Office of Personnel Management--Posting notice of new OPM regulations, 5 CFR Part 110.

Securities and Exchange Commission--Organization; conduct and ethics; and information and requests, 17 CFR Part 200.

Coast Guard, Department of Homeland Security--OMB control numbers assigned pursuant to the Paperwork Reduction Act, 33 CFR Part 4.

Coast Guard, Department of Homeland Security--Organization, general course and methods governing marine safety functions, 46 CFR Part 1.

Coast Guard, Department of Homeland Security--Licensing of maritime personnel, 46 CFR Part 10.

Coast Guard, Department of Homeland Security--General provisions, 46 CFR Part 30.

Coast Guard, Department of Homeland Security--Domestic and foreign voyages by sea, 46 CFR Part 42.

Coast Guard, Department of Homeland Security--General provisions, 46 CFR Part 50.

Coast Guard, Department of Homeland Security--General provisions, 46 CFR Part 70.

Coast Guard, Department of Homeland Security--Inspection and certification, 46 CFR Part 107.

Coast Guard, Department of Homeland Security--General provisions, 46 CFR Part 110.

Coast Guard, Department of Homeland Security--General provisions, 46 CFR Part 114.

Coast Guard, Department of Homeland Security--Compatibility of cargoes, 46 CFR Part 150.

Coast Guard, Department of Homeland Security--Approval of equipment and materials, 46 CFR Part 159.

Coast Guard, Department of Homeland Security--General provisions, 46 CFR Part 175.

Coast Guard (Great Lakes Pilotage), Department of Homeland Security--Great Lakes Pilotage regulations, 46 CFR Part 401.

National Highway Traffic Safety Administration, Department of Transportation--OMB control numbers for information collection requirements, 49 CFR Part 509.

Related Statutes & Rules:

This section is referred to in *20 USCS § 1221-3*; *41 USCS § 421*; *42 USCS § 242k*; *44 USCS § § 3504, 3506, 3509, 3514*.

Research Guide:

Federal Procedure:

2 Fed Proc L Ed, Administrative Procedure § 2:66.

Am Jur:

45B Am Jur 2d, Job Discrimination § 1641.

Forms:

17 *Bender's Federal Practice Forms, Form CrR34:2*, Federal Rules of Criminal Procedure.

15 Fed Procedural Forms L Ed, Social Security and Medicare (2002) § § 60:29-31, 34, 35, 37-42, 45, 46, 57-59, 82, 83, 85, 102, 211, 216, 218, 219, 223-225, 240.

15A Fed Procedural Forms L Ed, Telecommunications (2002) § § 62:297-307, 339, 348.

16B Am Jur Legal Forms 2d (2001), Social Security and Medicare § § 235:6-9, 14-16, 18-21, 37-40, 65, 66, 68, 82.

17 Am Jur Legal Forms 2d (2001), Telecommunications § § 245:95-115.

Law Review Articles:

Lubbers. Paperwork redux: the (stronger) Paperwork Reduction Act of 1995, *49 Admin L Rev* 111, Winter 1997.

Interpretive Notes and Decisions:

1. Generally 2. Relationship with other laws 3. Judicial review 4. Particular materials

1. Generally

Action by operator of private mail forwarding service challenging regulation requiring customers to fill out information forms is dismissed, where operator contended regulation violated Paperwork Reduction Act (PRA) (*44 USCS § 3507*) by not having received prior approval from Director of Information and Regulatory Affairs for collection of information, because PRA was enacted 10 years after formation of Postal Service and exclusion from scope of agencies covered by PRA indicates congressional intent that Postal Service not be so regulated, notwithstanding inclusion of Postal Rate Commission in scope of PRA due to commission's regulatory powers. *Shane v Buck* (1985, DC Utah) 658 F Supp 908, affd (1987, CA10 Utah) 817 F2d 87.

2. Relationship with other laws

In suit challenging Federal Motor Carrier Safety Administration's (FMCSA) finding that commercial motor carrier violated *49 C.F.R. § 395.8(k)(1)* by failing to maintain each driver's toll receipts and improperly combined toll receipts of all other drivers, FMCSA's requirements regarding toll receipts did not violate Paperwork Reduction Act, *44 USCS § 3501-3520*. *Darrell Andrews Trucking, Inc. v Fed. Motor Carrier Safety Admin.* (2002, App DC) 353 US App DC 113, 296 F3d 1120.

Claim for declaratory relief was ripe for adjudication in action by employers seeking to stop implementation of state regulations on grounds that regulations violated OSHA (*29 USCS § 651* et seq.), where state contended that OSHA standards were stayed pending review of Office of Management and Budget (OMB) because (1) under *44 USCS § 3507(b)*, any matter not denied or approved by OMB within 90 days is deemed to be approved, and (2) notice of one year approval of standards had been given for standards in question. *New Jersey State Chamber of Commerce v New Jersey* (1987, DC NJ) 653 F Supp 1453, 13 BNA OSHC 1097, 1987 CCH OSHD P 27866.

3. Judicial review

District Court has power to review decision of Director of OMB to grant conditional clearance of information collection form. *Shell Oil Co. v Department of Energy* (1979, DC Del) 477 F Supp 413, affd (1980, CA3 Del) 631 F2d 231, 1980-2 CCH Trade Cases P 63525, cert den (1981) 450 US 1024, 68 L Ed 2d 219, 101 S Ct 1730, 1981-1 CCH Trade Cases P 63884.

Challenge to OMB's decision to approve EPA's Information Collection Requests (ICR) in connection with rulemaking regarding toxic chemical reporting requirements is dismissed for lack of subject-matter jurisdiction, even though consultant makes technical argument that alleged procedural violations prevent EPA's submission from being statutorily sufficient to constitute adequate ICR so as to trigger judicial review bar that otherwise applies, because *44 USCS § 3507(d)(6)* is nothing less than explicit statement of clear congressional intent that, under Paperwork Reduction Act (*44 USCS § 3501* et seq.), OMB's ICR approval decisions are unequivocally not subject to judicial review. *Tozzi v EPA* (2001, DC Dist Col) 148 F Supp 2d 35.

4. Particular materials

Tax instruction booklets simply assist taxpayer in completing tax forms and insure compliance with information collection requests, hence booklets are not required to display OMB number. *United States v Holden* (1992, CA8 Mo) 963 F2d 1114, 92-2 USTC P 50321, 69 AFTR 2d 1288, cert den (1992) 506 US 958, 121 L Ed 2d 342, 113 S Ct 419.

Tax instruction booklets are not required to display OMB control numbers. *United States v Axmear* (1992, CA8 Minn) 964 F2d 792, 92-1 USTC P 50278, 69 AFTR 2d 1305, cert den (1993) 506 US 1048, 122 L Ed 2d 120, 113 S Ct 963.

HHS regulation requiring each of adopting agency's funding recipients to complete written self-evaluation of its compliance under ADEA and to make it available on request to agency and public for period of 3 years following its completion was governed by Act since it was both record-keeping requirement and collection of information. *Action*

Alliance of Senior Citizens v Sullivan (1991, App DC) 289 US App DC 192, 930 F2d 77, 56 CCH EPD P 40775, cert den (1991) 502 US 938, 116 L Ed 2d 323, 112 S Ct 371, 57 CCH EPD P 41060.