



AUG 18 2015

MEMORANDUM FOR: COURTNEY HIGGINS
Office of Management and Budget OIRA

THROUGH: MICHEL SMYTH
Departmental Clearance Officer

FROM: DAVID MICHAELS, PhD, MPH
Assistant Secretary
Occupational Safety and Health Administration

SUBJECT: Request for Emergency PRA Clearance

The Occupational Safety and Health Administration (OSHA) seeks to use emergency processing procedures to obtain OMB approval under the Paperwork Reduction Act (PRA) for the Direct Final Rule, "Streamlining of Provisions on State Plans for Occupational Safety and Health," revising the "Occupational Safety and Health State Plans" information collection approved under OMB control number 1218-0247. Emergency approval for the revision is sought by October 1, 2015. OSHA will notify OMB if a significant adverse comment is received on this action and withdraw this emergency request.

On August 18, 2015, OSHA will publish a Direct Final Rule/Notice of Proposed Rulemaking (DFR/NPRM) primarily to revise 29 CFR part 1952 and 29 CFR part 1956 to delete the detailed descriptions of each State Plan's coverage, purely historical data, and other unnecessarily codified information in 1952 Subparts C-FF and 1956 Subparts E-I, which will not impact approved collection of information requirements under OMB Control Number 1218-0247. In addition, OSHA intends to move most of the provisions of subpart A of part 1952, which contains general regulations affecting State Plans, into part 1902, where most of the general regulations on State Plans are currently found. Finally, OSHA intends to revise 29 CFR parts 1902, 1903, 1904, 1953, 1954, 1955 and 1956 to delete or update cross-references, as needed.

These revisions are designed to eliminate the unnecessary codification of material specific to each State Plan in the Code of Federal Regulations (CFR) and thus save the time and funds currently expended in making minor changes to this material. Notice of changes to a State Plan's description, such as minor coverage changes, will be available on the OSHA public website as well as in the *Federal Register*. The streamlining of OSHA State plan regulations does not change the areas of coverage or any other substantive components of any State plan. It also does not affect the rights and responsibilities of the State plans, or any employers or employees, except to eliminate the burden on State plan designees to keep paper copies of

approved State plans and plan supplements in an office, and to submit multiple copies of proposed State plan documents to OSHA.

Emergency clearance of the PRA request is necessary, in part, because of the establishment of the Maine State Plan. OSHA published a *Federal Register* notice granting initial approval of the Maine State Plan on August 5, 2015. OSHA is deferring the change to the regulatory text to add a description of the Maine State Plan until the streamlining changes take effect. The change to the regulatory text will be accomplished through a Final Rule announced in a separate *Federal Register* notice.

OSHA is currently holding up publication of several other important State Plan documents, pending the changes set forth in the DFR/NPRM. FAA and OSHA entered into a Memorandum of Understanding to clarify that OSHA has enforcement authority over specified occupational hazards (blood borne pathogens, noise, and HAZCOM) as they relate to crew members on air craft in operation, but not flight deck crew members. In accordance with the Occupational Safety and Health Act, State Plans were offered the opportunity to exercise state enforcement in these areas, but have all elected to defer to OSHA. This nuance in State Plan coverage needs to be communicated to the public. Normally, a burdensome and lengthy rulemaking process would be required to change each State Plan's subpart of 29 CFR 1952, thus delaying official notice to the public and potentially causing confusion. However, once the changes set forth in this DFR/NRPM are accomplished, OSHA can promptly inform the public through a simple *Federal Register* notice and an update to OSHA's webpage.

In addition, the New Jersey State Plan is ready to receive "Certification" from OSHA pursuant to 29 CFR 1956.23 and 29 CFR 1902.34 and once granted, OSHA would need to modify 29 CFR 1956 to reflect this change if the streamlining changes were not in place. Since 29 CFR 1956 is the subject of the streamlining effort in this DFR/NPRM, processing New Jersey's Certification before the DFR/NPRM is published will cause confusion and lack of transparency to the public.

Also, Cal/OSHA and federal OSHA entered into a revised operational status agreement, clarifying coverage, in April, 2014. This document has not been published in the *Federal Register* yet because of the pending streamlining changes. Finally, there are at least three State Plans that have requested minor changes in coverage of specific geographical areas within the state, namely military bases and tribal lands. These State Plans wish to transfer enforcement authority back to OSHA, due to difficulty in obtaining access to these areas or other enforcement challenges. Normally, even these minor changes in coverage would require rulemaking to modify the State Plan's subpart in the 29 CFR 1952 or 1956 and provide notice to the public. After streamlining, many of these changes would only require a simple *Federal Register* notice and updates to the detailed coverage information that will be displayed on OSHA's State Plan webpage. Processing these changes as rulemakings prior to the publication of the DFR/NPRM and completion of the streamlining of 29 CFR 1952 and 1956, would confuse the public and work against the goal of government transparency. For these reasons, the Department seeks immediate changes to the State Plan information collection, to reflect the CFR revisions implemented by this streamlining DFR/NPRM.

Thank you for your consideration of this request.