

## List of Subjects in 25 CFR Part 21

Indians, Indians—welfare contracts.

For the reasons given in the preamble, part 21 of title 25, chapter I of the Code of Federal Regulations is proposed to be revised as set forth below.

# **PART 21—SOCIAL WELFARE ARRANGEMENTS WITH STATES OR OTHER AGENCIES**

## **Sec.**

- 21.1 Who may negotiate agreements with States, Counties, and other Federal agencies?
- 21.2 Who may sign agreements for the relief of distress and social welfare of Indians?
- 21.3 What must the State, County, or other Federal welfare agency provide?
- 21.4 What standards must welfare service providers meet?
- 21.5 What will the Bureau provide?
- 21.6 What information is collected?
- 21.7 Definitions.

Authority: 25 U.S.C. 454.

## **§ 21.1 Who may negotiate agreements with States, Counties, and other Federal agencies?**

The Secretary may negotiate with State, county, or other Federal welfare agencies to provide welfare services for Indians within a particular State and within the exterior boundaries of Indian reservations or on trust or restricted lands that are under the jurisdiction of the Bureau of Indian Affairs.

## **§ 21.2 Who may sign agreements for the relief of distress and social welfare of Indians?**

The proper officer of the State, county, or other Federal welfare agency must sign agreements to provide welfare services. Evidence of the officer's authority must accompany the agreement. Agreements to provide welfare services are not effective until the Secretary approves and signs them.

## **§ 21.3 What must the State, County, or other Federal welfare agency provide?**

(a) *Plan of operation.* A plan of operation describing the services and assistance to be rendered and a budget showing the plan of expenditures of funds must be submitted with the agreement. No change in the plan of operation may be made without the Secretary's prior approval.

(b) *Financial statements.* Thirty days after the close of each fiscal year, a detailed financial statement showing all expenditures must be submitted to the Secretary. Any deviations from the approved plan of operation must be explained and the records of the contractor must remain available for inspection by representatives of the Bureau of Indian Affairs.

## **§ 21.4 What standards must welfare service providers meet?**

(a) *Service.* The standards of aid, care, and service for Indians can be no less than the standards for other clients requiring similar aid, care, and services.

(b) *Personnel.* Unless the Secretary has agreed otherwise, the personnel employed for provision of public welfare services to Indians are subject to the contractor's merit system and the approval of the Secretary and local welfare authorities.

## **§ 21.5 What will the Bureau of Indian Affairs provide?**

(a) *Cooperative services.* The Bureau will maintain cooperative services at the local level.

(b) *Government property and facilities.* The agreement must specify the terms under which the contractor may use Federal property, facilities and equipment. Agreements that allow use of Federal automobiles must require the contractor be responsible for damage or injury to property or persons and to return the equipment in good condition. The contractor must carry sufficient insurance and expressly relieve the Federal Government of any and all liability for any personal injury or property damages.

## **§ 21.6 What information is collected?**

The information collection requirements contained in § 21.3 will be approved by the Office of Management and Budget as required by 44 U.S.C. 1320 *et seq.* The information collected in the plan of operation will be used to determine how contract funds are utilized and to measure performance of the contractor and plan for future agreements. The information collected in the financial statement will be used to determine the adequacy of services and utilization of the budget provided to the contractor. A response is required to obtain a benefit.

## **§ 21.7 Definitions.**

Must means a mandatory or imperative act or requirement.

Secretary means the Secretary of the Interior.

Dated: June 6, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 1**

RIN 2900-A133

## **Rulemaking procedures; Public Participation**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** In a document recently published in the Federal Register (61 FR 11309), the Department of Veterans Affairs (VA) amended the "GENERAL PROVISIONS" regulations by eliminating a policy statement concerning prior notice-and-comment for rulemaking. That action, taken without prior notice-and-comment, concluded that the policy statement was unnecessary. Judicial review has been sought on the basis that such action did not comply with notice-and-comment provisions. While we believe such position is not legally correct, we do not object to providing interested parties with an opportunity to comment on whether the policy statement should be eliminated. Accordingly, a companion document published in the Rules and Regulations section of this issue of the Federal Register reestablishes the policy statement and this document proposes to eliminate it, thus affording interested parties the opportunity to comment thereon. For reasons stated below, it does not appear that there is a need to retain the policy statement.

**DATES:** Comments must be received on or before August 30, 1996.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-A133." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Gessel, Director, Office of Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8605.

**SUPPLEMENTARY INFORMATION:** This document proposes to amend the "GENERAL PROVISIONS" regulations in 38 CFR part 1 by removing § 1.12.

This section consists of a policy statement concerning prior notice-and-comment for rulemaking.

The provisions of 5 U.S.C. 553 set forth notice-and-comment requirements for rulemaking and include an exemption from the notice-and-comment requirements for rulemaking concerning public property, loans, grants, benefits, or contracts. Regardless of whether the rulemaking concerns public property, loans, grants, benefits, or contracts, the provisions of 5 U.S.C. 553 also contain exemptions from the notice-and-comment requirements for interpretative rules; general statements of policy; rules of organization, procedure, or practice; and for rules published with an appropriate statement of "good cause." The regulatory history of § 1.12 indicates that, despite the statutory exemption for public property, loans, grants, benefits, or contracts, VA intended to utilize the notice-and-comment provisions for rulemaking unless it were determined that it was appropriate to use an applicable exemption other than an exemption based on the mere fact that the subject matter concerned property, loans, grants, benefits, or contracts (see 37 FR 3552, Feb. 17, 1972).

Subsequent to the promulgation of § 1.12, statutory provisions were established that specifically apply the public notice-and-comment provisions of 5 U.S.C. 553 to VA rulemaking concerning loans, grants, or benefits (see 38 U.S.C. 501(d)). These statutory provisions do not impose notice-and-comment provisions for rulemaking concerning public property or contracts.

Also, subsequent to the promulgation of § 1.12, statutory provisions were established that specifically apply notice-and-comment provisions to certain rulemaking concerning contracts. In this regard, 41 U.S.C. 418b provides, with certain exceptions, that "no procurement policy, regulation, procedure, or form (including amendments or modifications thereto) relating to the expenditure of appropriated funds that has (1) a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure or form, or (2) a significant cost or administrative impact on contractors or offerors, may take effect until 60 days after the procurement policy, regulation, procedure, or form is published for public comment in the Federal Register."

It does not appear that there is a need for VA to self-impose additional notice-and-comment requirements for

rulemaking beyond those imposed by statute.

A companion document reestablishing § 1.12 is published in the Rules and Regulations section of this issue of the Federal Register.

No notice of proposed rulemaking was required in connection with this rulemaking action. Accordingly, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Nevertheless, the Secretary of Veterans Affairs certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. The adoption of the proposed rule would not have a direct effect on small entities.

There is no Catalog of Federal Domestic Assistance program number.

#### List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: June 21, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as set forth below:

### PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

#### § 1.12 [Removed]

Section 1.12 and the undesignated center heading preceding § 1.12 are removed.

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[WA 54-7127; FRL-5529-9]

#### Clean Air Act Reclassification; Spokane, Washington Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to find that the Spokane, Washington carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standard (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas, December 31, 1995. This proposed finding is based on EPA's review of monitored air quality data for compliance with the CO NAAQS. If EPA takes final action on this proposed finding, the Spokane CO nonattainment area will be reclassified by operation of law as a serious nonattainment area. The intended effect of such a reclassification would be to allow the State additional time to submit a new State implementation plan (SIP) providing for attainment of the CO NAAQS by no later than December 31, 2000, the CAA attainment deadline for serious CO areas.

**DATES:** Written comments on this proposal must be received by July 31, 1996.

**ADDRESSES:** Written comments should be sent to: Montel Livingston, SIP Manager, Office of Air Quality, M/S OAQ-107, EPA Region 10, Docket #54-7127, 1200 Sixth Avenue, Seattle, Washington 98101. The rulemaking docket for this notice is available for public review during normal business hours at the following location: EPA, Region 10, Office of Air Quality, M/S OAQ-107, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the docket are also available at the Washington Department of Ecology, Attention Tami Dahlgren, Olympia, Washington 98504-7600, telephone (360) 407-6830; and at the Spokane County Air Pollution Control Authority, West 1101 College, Suite 403, Spokane, Washington 99201, telephone (509) 456-4727.

**FOR FURTHER INFORMATION CONTACT:** William M. Hedgebeth of the EPA Region 10 Office of Air Quality, (206) 553-7369.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. CAA Requirements and EPA Actions Concerning Designation and Classifications

The CAA Amendments of 1990 (CAAA) were enacted on November 15, 1990. Under section 107(d)(1)(C) of the CAA, each carbon monoxide (CO) area designated nonattainment prior to enactment of the 1990 Amendments, such as the Spokane area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of