

effective date of the Act and review of rules adopted after the effective date within 10 years of the adoption of the final rule. The purpose of the reviews is to determine if these rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities. The Department considers the following factors in reviewing the rules:

- The continued need for the rule.
- The nature of complaints or comments received concerning the rule from the public.
- The complexity of the rule.
- The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and to the extent feasible, with State and local governmental rules.
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In accordance with section 610, on August 5, 1981 (46 FR 39882), the Department published a notice of its plan for review of its rules that might have a significant economic impact upon a substantial number of small entities. The plan for review established a deadline of January 1, 1991, for completing the review of all rules existing on January 1, 1981, and the Department met this deadline.

The Department has reviewed all rules published after January 1, 1981, prior to publication to determine if the rule would have a significant economic impact upon a substantial number of small entities. Periodic enactment of reauthorizing legislation for Department programs therefore ensures a review of existing regulations under section 610 at least every four or five years.

Review of All Proposed and Final Rules

It is the policy of the Secretary of Education that all proposed and final rules be thoroughly reviewed to assess their impact on small entities. To ensure this review, the Department has established a clearance process for all regulatory documents managed by the Division of Regulatory Services (DRS) in the Office of the General Counsel.

While it is Department policy to regulate only when absolutely necessary and in the least burdensome way possible, it is necessary for the Department to issue a limited number of proposed and final rules each year. Each rule is carefully screened under the Act to determine if it will have an impact on

any small entities and, if so, what this impact will be.

In most cases the analysis supports a determination the rule can be certified by the Secretary as not having a significant economic impact upon a substantial number of small entities. The certification and a supporting explanation are then included with both the proposed and final rules.

For a proposed rule with a certification by the Secretary, all of the comments received are carefully screened to determine if any of them specifically address the certification or relate to the consequences of the rule or the alternatives considered by the Department. If comments are received on the certification or the supporting rationale for the certification, the Department analyzes the impact of the rule on small entities in light of the additional information provided by the commenters, prepares an appropriate response to the comments, and certifies the final rule or prepares a regulatory impact analysis, as appropriate.

A significant rule, following Department clearance, is also sent to the Office of Management and Budget (OMB) for further review under Executive Order 12866 (Regulatory Planning and Review). Similarly, a draft rule that has a significant economic impact on a substantial number of small entities under the Act will be sent to the Small Business Administration Office of Advocacy (Advocacy), and Advocacy comments will be given appropriate consideration by the Department, as required by Executive Order 13272. As necessary, OMB may consult with Advocacy on the impact on small entities under the March 29, 2002, Memorandum of Understanding between those offices.

For those rules where a certification is not supported by the analysis of the impact on small entities, the Department prepares an IRFA and FRFA, as appropriate, in accordance with the following procedures.

Procedures for Compliance With the Regulatory Flexibility Act and Executive Order 13272

(1) Determine whether the rule is subject to the Act. Generally, the Act applies in all cases in which the Department is required to publish a notice of proposed rulemaking (NPRM).

(2) If the rule is subject to the Act, prepare an IRFA for the rule incorporating the necessary information. Some of this information will be available from the initial analysis of the proposed rule and the preamble to the NPRM, other information will require identifying the specific actions a small

entity must take in order to comply with the rule.

(3) Notify the Chief Counsel for Advocacy of the Small Business Administration (SBA) and provide a copy of the draft NPRM and IRFA a reasonable time prior to publication. This notification will usually occur at the time the draft NPRM is submitted to the Office of Management and Budget for review under Executive Order 12866.

(4) Publish the IRFA or a summary of the IRFA with the NPRM in the **Federal Register**. Unless the IRFA is extremely lengthy or complex, it is preferable to publish the entire analysis rather than a summary.

(5) In preparing the final rule, consider and respond to all comments on the impact of the rule on small entities, including comments from the SBA.

If a determination is made at this time that the rule will not have a significant economic impact on a substantial number of small entities, a certification and statement of factual basis of support may be included with the final rule. Otherwise, a FRFA incorporating the required information must be prepared. Publish the FRFA or a summary in the **Federal Register** with the final rule. Unless the FRFA is extremely lengthy or complex, it is preferable to publish the entire analysis rather than a summary.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: May 6, 2003.

Rod Paige,

Secretary of Education.

[FR Doc. 03-11762 Filed 5-9-03; 8:45 am]

BILLING CODE 4000-01-P