

an officer, employee, contractor, or health professional volunteer of an entity described in 42 U.S.C. 233(g)(4) or a health professional, officer, employee, or contractor of a free clinic described in 42 U.S.C. 233(o). In the event the individual is no longer an officer, employee, contractor, or health professional volunteer of an entity described in 42 U.S.C. 233(g)(4), or a health professional, officer, employee, or contractor of a free clinic described in 42 U.S.C. 233(o), the determination shall be sent by certified or registered mail to the individual and to the last entity described in 42 U.S.C. 233(g)(4) or free clinic described in 42 U.S.C. 233(o) at which such individual was an officer, employee, contractor, health professional volunteer, or health professional.

(b) A final determination shall be effective upon the date the written determination is received by such entity or free clinic.

(c) A final determination that an individual provider shall not be deemed to be an employee of the Public Health Service shall apply to all acts or omissions of the individual occurring after the date the adverse final determination is received by such entity or free clinic.

(d) The Attorney General will inform the National Practitioner Data Bank of any final determination under § 15.17 that an individual shall not be deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. 233.

§ 15.20 Reinstatement.

(a) Not sooner than five years after the time for rehearing has expired, and no more often than once every five years thereafter, an individual who has been the subject of a final determination under § 15.17 may petition the initiating official for reconsideration of that determination and for reinstatement. The individual bears the burden of proof and persuasion.

(b) In support of the petition for reinstatement, the individual shall submit relevant evidence relating to the period since the original proceedings under this subpart and a statement demonstrating and explaining why treating the individual as an employee of the Public Health Service for purposes of 42 U.S.C. 233 would no longer expose the United States to an unreasonably high degree of risk of loss.

(c) Upon receiving a petition for reinstatement, the initiating official shall forward the petition, together with an evaluation and recommendation on whether the petition makes a prima facie case for reinstatement, to the adjudicating official. The adjudicating

official shall determine, in the adjudicating official's discretion, whether the petition makes a prima facie case that the individual provider no longer would expose the United States to an unreasonably high degree of risk of loss. The adjudicating official's determination that a petition does not make a prima facie case for reinstatement is not subject to further review.

(d) If the adjudicating official determines that a prima facie case has been made for reinstatement, an administrative law judge shall be appointed in accordance with 5 U.S.C. 3105 and shall conduct such proceedings pursuant to §§ 15.14 through 15.16 as the administrative law judge deems necessary, in the administrative law judge's discretion, to determine whether the individual has established that treating the individual as an employee of the Public Health Service for purposes of 42 U.S.C. 233 would no longer expose the United States to an unreasonably high degree of risk of loss. After conducting such proceedings as the administrative law judge deems necessary, the administrative law judge shall certify the record to the adjudicating official and shall submit written findings of fact, conclusions of law, and a recommended decision to the adjudicating official pursuant to § 15.16.

(e) Following proceedings conducted under paragraph (d) of this section, the adjudicating official shall make the final determination on the basis of the record, findings, conclusions, and recommendations presented by the administrative law judge, which shall include the record from the original determination and any petition for rehearing. Copies of the adjudicating official's final determination shall be furnished to the parties. The adjudicating official's final determination shall constitute the final agency action.

(f) A determination that an individual is reinstated pursuant to this section shall be distributed in the same manner as provided in § 15.19 and shall apply only to acts or omissions of the individual occurring after the date of the final reinstatement determination.

Dated: June 28, 2024.

Merrick B. Garland,

Attorney General.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1630

RIN 3046-AB33

Removal of ADA Appendix Sections Related to Removal of Final ADA Wellness Rule Vacated by Court

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is issuing a final rule supplementing a final rule it published on December 20, 2018, entitled "Removal of Final ADA Wellness Rule Vacated by Court," which removed the incentive section in ADA regulations. This rule removes the discussion about the incentive section from the ADA appendix.

DATES: This final rule is effective as of July 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sarah DeCosse, Assistant Legal Counsel, (202) 921-3240 (voice); (800) 669-6820 (TTY), Office of Legal Counsel, 131 M Street NE, Washington, DC 20507. Requests for this document in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 921-3191 (voice), (800) 669-6820 (TTY), or (844) 234-5122 (ASL).

SUPPLEMENTARY INFORMATION: On May 17, 2016, the Equal Employment Opportunity Commission (EEOC or Commission) published a final rule under the authority of title I of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101-12117, "provid[ing] guidance on the extent to which employers may use incentives to encourage employees to participate in wellness programs that ask them to respond to disability-related inquiries and/or undergo medical examinations." 81 FR 31126 (May 17, 2016). This 2016 rule also discussed the incentive provisions in the ADA appendix.

On October 24, 2016, AARP filed a complaint in the U.S. District Court for the District of Columbia challenging the incentive section of the ADA rule. On August 22, 2017, the District Court concluded that the Commission did not provide sufficient reasoning to justify the incentive limit adopted in the ADA rule and remanded the rule to the EEOC for reconsideration without vacating it. Following a motion by AARP to alter or amend the court's summary judgment order, the court issued an order vacating the incentive section of the rule, which was 29 CFR 1630.14(d)(3), effective

January 1, 2019. *AARP v. EEOC*, No. 16–2113 (D.D.C. December 20, 2017).

Consistent with that decision, the EEOC published a final rule entitled “Removal of Final ADA Wellness Rule Vacated by Court” at 83 FR 65296 (December 20, 2018) to remove the incentive section of the ADA rule at 29 CFR 1630.14(d)(3). However, due to an oversight, this 2018 final rule did not remove the corresponding discussion of that section in the appendix to 29 CFR part 1630. The instant final rule serves to supplement 83 FR 65296 (December 20, 2018) and implement the court’s ruling by removing the corresponding portions of the appendix to 29 CFR part 1630 in which 29 CFR 1630.14(d)(3) is discussed. Doing so will reflect the revisions to the ADA rule as amended by 83 FR 65296.

Like the 2018 rule, this supplemental rule is not subject to the requirement to provide an opportunity for public comment because it falls under the good cause exception at 5 U.S.C. 553(b)(4)(B). The good cause exception is satisfied when notice and comment is “impracticable, unnecessary, or contrary to the public interest.” *Id.* Just as the EEOC proceeded directly to a final rule for the original removal of the regulatory incentive text based on the “good cause” exception, here, too, this rule is an administrative measure that corrects an omitted step in 2018 and implements the court’s order referenced above. Seeking public comment on this removal also is unnecessary because the Commission is acting to execute the court order.

Finally, because this rule implements a court order already in effect, the Commission has good cause to waive the 30-day effective date under 5 U.S.C. 553(d)(3).

Regulatory Procedures

Executive Order 12866 (as Amended by Executive Order 14094)

The Commission has complied with the principles in section 1(b) of Executive Order 12866, as amended by Executive Order 14094, Regulatory Planning and Review. This rule is not a “significant regulatory action” under section 3(f) of the Executive Order and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Executive Order.

Paperwork Reduction Act

This regulation contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 604, requires a final regulatory flexibility analysis for final rules only “after being required to publish a general notice of proposed rulemaking” or for interpretive internal revenue laws. This rule is being promulgated without a notice of proposed rulemaking for the reasons described above. Further, it does not concern internal revenue matters. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, in 1995 dollars, updated annually for inflation. In 2023, that threshold was approximately \$177 million. It will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

List of Subjects in 29 CFR Part 1630

Equal employment opportunity, Individuals with disabilities.

For the reasons set forth in the preamble, and under the authority of 42 U.S.C. 12116 and 12205a of the Americans with Disabilities Act, the Commission amends 29 CFR part 1630 as follows:

PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT

- 1. The authority citation for part 1630 continues to read as follows:

Authority: 42 U.S.C. 12116 and 12205a of the Americans with Disabilities Act, as amended.

Appendix to Part 1630 [Amended]

- 2. Amend the appendix to part 1630, under the heading “Section 1630.14 Medical Examinations and Inquiries Specifically Permitted,” by removing the entries for “Section 1630.14(d)(3): Limitations on Incentives” and “Application of Section 1630.14(d)(3) to Smoking Cessation Programs”.

For the Commission.

Charlotte A. Burrows,
Chair.

[FR Doc. 2024–14606 Filed 7–3–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2023–0072; EPA–HQ–OAR–2022–0730; FRL–12032–01–OAR]

RIN 2060–AV09; 2060–AV71

New Source Performance Standards; Incorporation by Reference; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) finalized multiple actions with incorporation by reference (IBR) in separate final rules that amended the same centralized IBR section. The amendatory instructions for that section were drafted based on a different publication order than the ultimate publication order of the affected rules. This rule corrects the instructions allowing Office of the Federal Register (OFR) editors to codify the amendments from each rule.

DATES: The corrections in instructions 1 and 2 are effective July 8, 2024, and the corrections in instructions 3 and 4 are effective July 15, 2024.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, P.O. Box 12055, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: ali.muntasir@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA published two final rules, 89 FR 39798 (May 9, 2024) and 89 FR 42932 (May 16, 2024), that each amended 40 CFR 60.17, the centralized IBR section for 40 CFR part 60. The amendatory instructions were drafted with the assumption that the two rules would publish in the reverse order. Given the order in which they published, if OFR editors were to effectuate the instructions, the editors would revise paragraphs other than the ones intended on July 8, 2024 (the effective date of the first rule), and July 15, 2024 (the effective date of the second rule), and would be unable to carry out an instruction in the second rule. This rule corrects the instructions allowing OFR editors to codify the amendments from each rule.

Corrections

I. As of July 8, 2024, in FR Doc. 2024–09233 at 89 FR 39798 in the **Federal Register** of Thursday May 9, 2024, make the following corrections: