

48 FR 13666

## OFFICE OF MANAGEMENT AND BUDGET

AGENCY: Office of Management and Budget, Executive Office of the President.

5 CFR Part 1320

Controlling Paperwork Burdens on the Public

*48 FR 13666*

March 31, 1983

**ACTION:** Final rule.

**SUMMARY:** This rule implements the provisions of the Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35) concerning collections of information. This rule is designed both "to minimize the federal paperwork burden for individuals, small businesses, state and local governments, and other persons" and "to maximize the usefulness of information collected by the federal government." The Office of Management and Budget (OMB) published a Notice of Proposed Rulemaking on September 8, 1982, and received comments and suggestions on the proposal. This final rule has been adopted after considering all comments submitted by federal agencies and the public. It will appear as a new Part 1320 of Title 5 of the Code of Federal Regulations, "Controlling Paperwork Burdens on the Public," and will supersede OMB Circular No. A-40.

**EFFECTIVE DATE:** May 2, 1983.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arnold Strasser, Reports Management Branch, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Telephone (202) 395-6880.

**TEXT: SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2812, codified at Chapter 35 of Title 44 of the United States Code, establishes policies and procedures for controlling paperwork burdens imposed by federal agencies on the public. Section 3516 of the Act authorizes the Director of the Office of Management and Budget (OMB) to "promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter." Sections 3504, 3506, and 3518 of the Act also invest the Director with regulatory authority in this area and require the agencies to comply with OMB directives concerning paperwork control and information management.

This rule implements OMB authority under the Paperwork Reduction Act with respect to the collection of information clearance and other paperwork control functions of the Director. In addition, Section 1320.16 of this rule, concerning inter-agency reporting, implements authority under the Federal Records Act and Section 104 of the Budget and Accounting Procedures Act of 1950 (*31 U.S.C. § 1111*).

This rule does not implement other authorities of the Director of OMB under the Paperwork Reduction Act or related laws, such as statistical policy and coordination, records management, privacy, or federal automatic data processing and telecommunications. (See *44 U.S.C. 3504(d), (e), (f), (g)*.)

This rule is designed "to minimize the federal paperwork burden for individuals, small businesses, state and local governments, and other persons" and "to maximize the usefulness of information collected by the federal government." *44 U.S.C. 3501(1), (3)*. The rule supersedes and rescinds OMB Circular A-40. Last revised in 1976, Circular A-40 does not reflect enactment of the Paperwork Reduction Act of 1980.

Elimination of unnecessary paperwork is an important element of the President's program of regulatory relief. The costs and inefficiencies associated with reporting and recordkeeping burdens imposed on the public significantly impede economic growth, consumer satisfaction, full employment, control of prices, and prosperity. Much of the informa-

tion collection activity of the federal government, of course, is necessary to the enforcement of laws and protection of the public. The Paperwork Reduction Act requires, however, that paperwork requirements not be imposed unless the practical value of the information is worth the burden it imposes. This rule details procedures to ensure that all proposed collections of information meet this stringent test.

On September 8, 1982, OMB published a Notice of Proposed Rulemaking in the Federal Register, *47 FR 39515*. In response to this notice, OMB has received comments from 54 federal agencies and 90 members of the public. Each comment has been considered in preparing this final rule. In addition, OMB has relied in developing these regulations upon its two years of practical experience of administering the Act. Significant changes in this rule from the proposal published on September 8, and significant comments received, are discussed in detail below. Information contained in the Supplementary Information section of the Notice of Proposed Rulemaking is hereby incorporated in this notice by reference, except insofar as it may be superseded by information in this notice.

1. *Section 1320.1 Purpose.* The citation to Section 104 of the Budget and Accounting Procedures Act of 1950 has been changed to reflect the recodification of Title 31 of the United States Code.

2. *Section 1320.2 Effect.* In response to comments, this section has been amended to clarify that the rule will take effect in its entirety on May 2, 1983. As stated in Section 1320.14(a), however, schedules for agency submission of reporting and recordkeeping requirements in current regulations for OMB review will be developed. This submission process will be completed by December 31, 1983. All reporting and recordkeeping requirements contained in agency rules shall have been reviewed and assigned OMB control numbers by March 1, 1984. These dates have been revised from those in the September notice to provide a more workable period for review.

Some members of the public have suggested that OMB require control numbers for reporting and recordkeeping requirements in current agency rules before these dates. Many such requirements have already been reviewed and assigned control numbers. However, because of uncertainty about the procedures for clearance of reporting and recordkeeping requirements in current regulations, some agencies have not yet submitted such requirements for OMB review. The December 31, 1983 date is therefore necessary to permit submission and clearance of such requirements on an orderly schedule. OMB anticipates that a substantial portion of these requirements will be submitted and acted upon prior to the first submission deadline.

3. *Section 1320.3 Coverage.* Several clarifications have been made in this section. First, the term "conducted or sponsored" has been substituted for the term "sponsored" to make clear that this rule applies to all collections of information by a federal agency. Second, the phrase "wherever conducted or sponsored" has been added to make clear that the rule applies to all collections of information by federal agencies no matter where they occur, in the United States or abroad.

Several agencies have noted ambiguities in Section 1320.3(c), as proposed. This paragraph stated that the statutory exceptions described in the paragraph apply "only after the investigation or action is sufficiently identified that potential respondents could be aware that the exception applies." OMB agrees that the judgment implied in this limitation was excessively subjective, and has therefore substituted an objective standard: "only after the agency has opened a case file or its equivalent with respect to a particular party." This will ensure that generalized investigations not targeted to particular persons or companies do not fall within the exception.

Several public comments strongly endorse this section's provisions, especially the clarification of statutory intent in the last sentence. It should be stressed that the exceptions to coverage outlined in this section must be strictly construed: this section does not permit generalized investigations of classes or categories of persons without necessary Paperwork Reduction Act clearance of paperwork requirements.

4. *Section 1320.4 General Requirements.* Two major issues of concern to the public and the agencies relate to this section: OMB authority to review reporting and recordkeeping requirements in current regulations that were adopted after public notice and comment, and to require display of control numbers on such requirements. These issues will be addressed in turn, followed by other issues raised by the comments.

(a) *OMB authority to review reporting and recordkeeping requirements in current rules adopted after public notice and comment.*

Several agencies and members of the public have commented that OMB's authority to review collections of information does not extend to collection of information requirements contained in agency regulations, and that provisions of this rule implementing OMB authority over such requirements is inconsistent with a memorandum by the Office of Le-

gal Counsel of the Department of Justice (OLC), dated June 22, 1982. These comments are based on a misunderstanding of the Act and of the OLC memorandum.

The language and intent of the Paperwork Reduction Act compel the conclusion that OMB has the authority to review, and in appropriate circumstances to disapprove, paperwork requirements contained in agency regulations. Section 3504(h) of the Act clearly and unambiguously recognizes OMB authority to review, approve, and disapprove collection of information requirements in proposed rules. The argument that paperwork burdens are somehow outside the purview of the Act merely because they are imposed by means of agency rule is thus refuted by the Act itself.

It is not possible to argue that OMB clearance authority is confined to forms and similar instruments. The key terms defining jurisdiction of the Act -- "collection of information" and "information collection request" -- are both defined expressly to include "reporting and recordkeeping requirements" in addition to "written report forms" and "application forms." 44 U.S.C. § 3502(4), (11). Many reporting requirements are enforced by means of forms, but other reporting requirements and virtually all recordkeeping requirements are imposed by other means, including oral surveys, guidelines, directives, and -- most significantly -- regulations. Moreover, many forms are themselves specifically contained in regulations, either as part of the regulatory text or as an appendix. The only way all reporting and recordkeeping requirements can be covered by the Act is to cover these other methods for the collection of information, including regulations. An exemption for regulations would result in a large and unwarranted loophole in the Act -- a loophole including all forms published in regulations, virtually all recordkeeping requirements, and most reporting requirements not involving a format set by the agency. Such a result would fly in the face of the announced congressional intention to eliminate virtually all exemptions from coverage in the old Federal Reports Act, S. Rep. No. 96-930, at 13. (Indeed, since reporting and recordkeeping requirements were reviewed by OMB and GAO under the Federal Reports Act, the contrary interpretation would actually create new exemptions from coverage and thus weaken -- not strengthen -- the Federal Reports Act.)

A distinction between reporting requirements in rules and those in forms -- with only the latter covered -- would also breed confusion, especially for the public. Many forms are published in the Code of Federal Regulations as part of a rule; others are cross-referenced in rules; others closely follow regulatory specifications. If reporting requirements in rules were exempt from OMB review and assignment of control numbers, then many forms would also be exempt -- a result that would make it impossible for the public to have confidence in the public protection features of the Act. Moreover, since only rules adopted after notice and comment procedures would be exempt -- since other rules are not "collection of information requirements" within the scope of Section 3504(h) -- the public could not tell which rules were covered by the Act and which were not. OMB does not believe that Congress could have intended such a result.

That OMB has authority to review reporting and recordkeeping requirements in current rules adopted after public notice and comment is also evident from the history of the Kennedy Amendment to the Act. Prior to the Kennedy Amendment, the Act -- which had already passed the House of Representatives -- made no distinction whatever between paperwork burdens in forms and paperwork burdens in regulations. All were covered. Senator Kennedy and others, however, were concerned that OMB's authority over paperwork requirements in regulations could disrupt public participation rights under the informal rulemaking provisions of the Administrative Procedure Act. He explained:

This legislation would permit the Director of OMB to overturn a rule which was adopted by an agency without providing any procedural rights for the people affected by the rule or for the agency that promulgated the rule. Thus, even if an agency has complied with all the appropriate procedural requirements for public notice and comment, and has spent years compiling an adequate agency record, this legislation would permit OMB to overturn that agency decision without even requiring OMB to justify its decision publicly. *Daily Congressional Record* S14689 (November 19, 1980).

Senator Kennedy's proposed accommodation of the Paperwork Reduction Act to the Administrative Procedure Act was to require OMB to participate in the rulemaking by filing public comments. Unless OMB filed such comments (and in the absence of certain other circumstances) it would not be permitted to disapprove the new paperwork requirement. If OMB did participate in the process, however, its ultimate authority to approve or disapprove the new paperwork requirement under the statutory standards would be unimpaired. As observed by Senator Danforth (the only other Senator commenting on the Kennedy Amendment):

I am willing to accept the Kennedy amendment, which is intended to clarify the authority of the Director of the OMB to review Federal rules and regulations to determine their impact on Federal paperwork. Essentially, as I understand it, the purpose of the Kennedy amendment is to prevent OMB from undoing a collection of information requirement specifically contained in an agency rule after that requirement has gone through the administrative rulemaking

process if the OMB Director ignored the rulemaking process. This seems fair enough. *Daily Congressional Record* S14689-90 (November 19, 1980).

The Kennedy Amendment was passed by the Senate, and is now found in Section 3504(h) of the Act. Neither the language of the Amendment nor any comment by a Member of Congress suggested that the Amendment was intended to affect OMB authority over any reporting or recordkeeping requirements other than those in *proposed* rules undergoing notice and comment rulemaking.

It should be clear from this history that OMB has full authority over paperwork requirements in regulations, limited only by Section 3504(h). Section 3504(h) itself, moreover, is solely a procedural limitation on OMB authority and does not diminish OMB's substantive review powers. Certainly, Section 3504(h) does not altogether exempt any class of collection of information from OMB review. It follows that OMB has authority over reporting and recordkeeping requirements in rules that were in effect when the Act was passed as well as in rules subsequently issued with or without public notice and comment. The purpose of § 1320.14 of this rule is to provide procedural protections for collections of information in current regulations, to ensure the public's right to participate in informal rulemaking proceedings. This resolution is fully in keeping with the spirit and intent of the Kennedy Amendment.

Nor can it be argued that this result is inconsistent with interpretations of the Act by the OLC. Because of the difficulties of the issue, OMB and the Department of the Treasury consulted the OLC on the Act's application to reporting and recordkeeping requirements in current rules. In a memorandum dated June 22, 1982, OLC concluded that the information collection request approval procedures of Sections 3504(c)(1) and 3507 do not apply to such requirements. OLC also affirmed that OMB had been given "broad powers by the Act to initiate and review proposals for changes in existing regulations and to coordinate and improve agency information practices whether contained in regulations or elsewhere." OLC provided further clarification of its views in a supplementary memorandum dated September 24, 1982, in which OLC commented on OMB interpretations and procedures. OLC concluded that "OMB does have authority to review and initiate proposals for change in existing regulations under Section 3504(b)(2) and, in accordance with the standards and limitations established by Sections 3504(h) and 3518(e), to disapprove collection of information requirements and proposed replacements for existing regulations."

Several commenters have argued that OMB review of reporting and recordkeeping requirements in regulations would amount to "regulatory reform" rather than paperwork reduction. As they point out, the legislative history is clear that Congress did not intend the Paperwork Reduction Act to be a "regulatory reform" bill. See H.R. Rep. No. 96-835, at 9; S. Rep. No. 96-930, at 8-9.

However, these comments misconstrue Congress' point. Congress did not mean that paperwork requirements should not be covered merely because they might be contained in regulations; it meant that OMB authority over paperwork should not be expanded to cover non-paperwork matters, *i.e.*, substantive regulatory issues. This is clear from the statute itself, which explicitly grants OMB authority to disapprove a "collection of information requirement *contained in an agency rule.*" 44 U.S.C. 3504(h) (emphasis added). The Statute also expressly states that "the authority of an agency under any other law to prescribe \* \* \* regulations \* \* \* for Federal information activities is subject to the authority conferred on the Director by this chapter." 44 U.S.C. 3518(a).

This is also clear from the legislative history. The Senate Report, for example, states:

The Committee intends that the Director of OMB continue efforts to oversee the information management and burden aspects of *government regulations*. This emphasis has great promise for minimizing the explosion of paperwork demands on the public because new regulations are causing the greatest growth in information requirement. *However, the Committee does not intend that "regulatory reform" issues which go beyond the scope of information management and burden be assigned to the Office.* S. Rep. No. 96-930, at 8-9 (emphasis added).

The limitations on OMB's "regulatory reform" power under the Act are implemented not by exempting reporting and recordkeeping requirements in regulations from coverage, but by an explicit substantive restriction on OMB's authority in Section 3518(e) (corresponding to § 1320.20(e) of this rule). As stated in the Senate Report,

Section 3518(e) . . . results from concern that the authority of this Act might be used to increase the power of OMB over substantive policy . . . . This bill has provisions to guard against that. Section 3518(e) provides that the bill does not affect in any way the powers of the President or OMB respecting the substance of agency policies. Thus S. 1411 draws an important distinction between paperwork management and substantive decisions. S. Rep. No. 96-930, at 56.

It is therefore incorrect to argue that Congress' intention that the Act not be a "regulatory reform" statute means that OMB should have no authority to review reporting and recordkeeping requirements in current rules. Such an interpretation would strip OMB of a major portion of its delegated functions, while adding nothing to Section 3518(e)'s tailored limitations on OMB power over substantive agency policy.

The most difficult issue of statutory construction under the Act is the correct procedural mode for review of reporting and recordkeeping requirements in regulations adopted after public notice and comment. The resolution of that issue is discussed under § 1320.11.

(b) *Control Numbers.* One of the major subjects of comment on paragraph (a) of this section, and on related provisions elsewhere in the rule, is the requirement for display of OMB control numbers on collection of information requirements contained in agency rules adopted after public notice and comment. Most public comments addressing the issue have strongly supported the control number requirement. As frequently pointed out, the control number provides a simple and effective way for the public to tell whether a paperwork burden an agency seeks to impose has been cleared as the Act requires.

Several commenters have opposed applying control numbers to collection of information requirements contained in rules adopted after public notice and comment. These comments do not seem to be based on policy considerations, since they offer no practical or programmatic reasons why OMB should depart from the longstanding requirement of control numbers on such collections. Rather, the comments have argued that OMB lacks the legal authority to require control numbers on such collections.

The main line of argument taken by these comments is that the statutory control number requirement of Section 3507(f) applies specifically to "information collection requests." This argument is beside the point. As noted in the Supplementary Information to the Notice of Proposed Rulemaking, OMB acknowledges that the statutory control number requirement, on its face, applies to information collection requests, and that Section 3504(h) -- the section of the Act addressing the clearance of collection of information requirements in proposed rules -- does not address the question of control numbers, either to require them or to forbid them. The application of control numbers to collection of information requirements is, however, fully consistent with statutory purposes, and within OMB's regulatory authority under the Act.

The Paperwork Reduction Act vests the Director of OMB with the authority to "develop and implement Federal information policies, principles, standards, and guidelines and [to] provide direction and oversee the review and approval of information collection requests, \* \* \* [and] the reduction of the paperwork burden." *44 U.S.C. 3504(a)*. That authority must be "exercised consistent with applicable law." *Ibid.* The Director's information policy functions also include "developing and implementing uniform and consistent information resources management policies and overseeing the development of information management principles, standards, and guidelines and promoting their use," *44 U.S.C. 3504(b)(1)*; "initiating and reviewing proposals for changes in \* \* \* agency procedures to improve information practices," *44 U.S.C. 3504(b)(2)*; and "evaluating agency information management practices to determine their adequacy and efficiency, and to determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director," *44 U.S.C. 3504(b)(5)*. Finally, the Director is granted broad regulatory authority by Section 3516: "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter." The control number requirement for collection of information requirements has been made pursuant to these authorities, and not because it is directly mandated by the Act.

The agencies' obligation to comply with the Director's decisions under these authorities is expressly set out. Section 3518(a) states: "Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information activities is subject to the authority conferred on the Director by this Chapter." Moreover, Section 3506(a) provides that "[e]ach agency shall be responsible for \* \* \* complying with the information policies, principles, standards, and guidelines prescribed by the Director."

Pursuant to these authorities, the Director has concluded that all collections of information, including those mandated by regulations, must display a currently valid OMB control number. Among the reasons for the Director's decision are the following:

First, application of the control number requirement to all Federal collections of information is consistent with the congressional intent:

The Director's responsibility to ensure *all collections of information* display a control number corresponds to the requirement of Section 3507(f) which states an agency shall not engage in a *collection of information* without obtaining a control number from the Director. S. Rep. No. 96-930, at 42 (emphasis added).

Prior to adoption of the Kennedy Amendment (now Section 3504(h)), the Act did not distinguish between "information collection requests" and "collection of information requirements." All were covered; all were subject to the control number requirement. This requirement was for the benefit of the public, as well as for the improved management of the paperwork process. The control number would show "that the Director of OMB is the accountable individual in the government to be sure that the information is needed, is not duplicative of information already collected, and is collected efficiently." S. Rep. No. 96-930, at 9. The Kennedy Amendment was not intended to disturb this.

The purpose of the Amendment, as clearly stated by its proponent and the only other speaker on the floor, was to ensure procedural fairness in public notice and comment rulemaking procedures by denying OMB the authority to disapprove a requirement without having first participated in the rulemaking by filing comments. See 120 Cong. Rec. S14689-90 (1980). Congress expressly preserved OMB's ultimate authority to disapprove a collection of information requirement in a rule. There is no basis for concluding that Congress intended to make such disapproval any less legally enforceable than it was before the Kennedy Amendment was adopted. Nor is there any basis for concluding that Congress intended to take away the public's means of telling whether or not a collection of information had undergone the clearance process and been approved by OMB. The decision of the Director to require control numbers on collection of information requirements contained in rules adopted after public notice and comment thus promotes the purposes of the Act.

Second, experience has shown that assignment of control numbers to reporting and recordkeeping requirements contained in regulations is workable, useful, and easily administered. Dozens of agencies, including the Commodities Futures Trading Commission, the Department of Agriculture, the Department of the Treasury (Bureau of Alcohol, Tobacco, and Firearms), the Environmental Protection Agency, the Nuclear Regulatory Commission, the Securities and Exchange Commission, the Federal Communications Commission, the Equal Employment Opportunity Commission, the Pension Benefit Guaranty Corporation, the Department of Labor, the Department of Health and Human Services, the Federal Maritime Commission, the National Credit Union Administration, and the Department of the Interior, have routinely submitted reporting and recordkeeping requirements in regulations to OMB for review and assignment of control numbers. The assignment of control number to paperwork requirements in regulations by OMB and GAO was the practice under the Federal Reports Act. This practice was presumably known to Congress when it enacted the Paperwork Reduction Act, and there is no evidence that it intended the practice to be changed. OMB believes that altering this established and smoothly-functioning administrative practice would be disruptive.

Third, the control number is an important mechanism for inventorying the paperwork burden, monitoring agency efforts to reduce the burden, coordinating the clearance process with the Information Collection Budget, and keeping track of individual requirements for purposes of periodic review. The Act requires extensive monitoring and inventorying of paperwork requirements. Control numbers are a convenient mechanism for carrying out these statutory responsibilities.

Fourth, the presence of control numbers will alert the public that the Act applies to paperwork requirements in regulations, and will make OMB accountable to the public for reducing burden. As the Senate Report notes, control numbers enable the public to play a "policing role in monitoring agency compliance with the legislation." S. Rep. No. 96-930, at 17. Public comment and participation is a key means of identifying ways to reduce unnecessary paperwork burdens.

Fifth, adherence by the agencies to the control number requirement will eliminate the risk that courts will find reporting and recordkeeping requirements not bearing control numbers unenforceable under Section 3512 of the Act. Although the Office of Legal Counsel memorandum of June 22, 1982 concluded, in effect, that OMB control numbers are not explicitly required by the Act itself, that opinion is not binding on the courts. Agency compliance with the requirement will reduce the risk of judicial disruption of regulatory schemes that depend on collection of information by means of regulation.

Finally, display of control numbers on collection of information requirements contained in agency rules is vital to ensuring the integrity of the control number mechanism for information collection requests. Many collections of information contained in rules are in fact "forms" published in the Code of Federal Regulations either as part of the regulatory text or as appendices. When distributed to the public, these forms appear identical to information collection re-

quests not contained in regulations. If the forms do not display a control number, the public will be confused: they may erroneously conclude that a form has not received OMB clearance under the Act and thus may be disregarded with impunity, or they may become persuaded that the lack of a control number is legally meaningless. A similar potential for confusion exists for collections of information mandated by regulation but not implemented by forms. Some such collections -- those promulgated pursuant to notice and comment procedures -- are "collection of information requirements." The remainder are "information collection requests." Yet the public cannot tell from the face of the Code of Federal Regulations which are which.

The purpose of the Paperwork Reduction Act and of this rule is to protect the public; it would be entirely contrary to the spirit and intent of the Act to make its fundamental public notification mechanisms depend upon legalistic distinctions between "information collection requests" and "collection of information requirements" -- distinctions that are in no way discernible on the face of the form or the regulation. The Director's decision to require control numbers for all collections of information eliminates this source of confusion, and thus implements the Congressional intent.

To the extent that opposing comments have relied on a memorandum by the OLC, their reliance is misplaced. As explained in the preamble to the Notice of Proposed Rulemaking, the OLC's June 22, 1982 memorandum did not address the issue of OMB's authority to require control numbers on collection of information requirements in agency rules. Moreover, OLC's September 24, 1982 memorandum stated:

OMB may require agencies to display control numbers on regulations containing collection of information requirements that have been approved. Such numbers shall function as management devices for purposes of internal OMB processing and inventory, and as a simple means of communicating to the public the fact that a requirement has been reviewed and approved by OMB.

(c) Other issues. Other issues have also been raised concerning paragraph (a) of § 1320.4. Several agencies and members of the public have pointed out that paragraph (a), as printed in the proposed rule, mistakenly eliminated the requirement that voluntary collections of information display control numbers. This conflicted with other sections of the proposed rule, and with the Act itself. The words "if the collection of information is non-voluntary" have been deleted to correct this error.

Several members of the public have requested clarification of how long an approved collection of information may be conducted. The proposed rule has therefore been modified by adding a new sentence: "An agency shall not continue to engage in such collection of information after the expiration date of the control number, unless OMB has approved an extension." This means that the agency must complete the collection of information within the approved time period, and may not engage in the collection or any part of it after the period expires. An agency may, of course, obtain an extension of the period upon a proper showing under the statutory standards.

There has been some confusion over the requirement that collections of information not covered by the Act contain a statement notifying potential respondents of that fact. Several agencies have suggested that this requirement not be imposed; however, the requirement is statutory and cannot be eliminated by regulation. The last sentence of paragraph (a) of this section has been reworded for the sake of clarity. It now reads: "Each agency shall ensure that collections of information required by law or necessary to obtain a benefit and which are submitted to nine or fewer persons shall state that the collection of information is not subject to OMB review under the Act." This notification requirement is not intended to apply to matters which are not collections of information as defined by § 1320.7 of this rule, nor to matters which are exempted from coverage of the Act as a whole under § 1320.3 of this rule. For example, the notification requirement does not apply if the collection of information is directed to federal employees in the course of their employment or if it calls for particularized facts or opinions specifically tailored to a single person. See § § 1320.7(p), 1320.7(k)(6).

Several members of the public suggested adding the words "for the proper performance of the agency's functions" after the word "necessary" in paragraph (b)(1) of this section. Since the suggested language is part of the terminology of the Act, the comments were adopted.

A new paragraph (c) has been added. This locates all substantive standards for submissions and review of collections of information under the Act in a single place in this rule. The new paragraph (c) sets forth the principles governing OMB review. Most of this material was located in § 1320.11(b) of the proposed rule. The standards are derived from the statutory terms and the legislative history. Subparagraph (1) makes clear that OMB will consider necessary any collection of information specifically mandated by statute or court order. This should be understood to extend to other

legal requirements with the force of a statute or court order, such as treaties, executive orders, and international agreements.

A new subparagraph (2) has been added at the request of several agencies to clarify the relationship between OMB approval of the information collection components of a regulation, and subsequent information collection requests implementing such regulation. The new subparagraph provides that OMB will consider necessary any information collection requests specifically required by an agency rule adopted after public notice and comment and approved or not acted upon by OMB pursuant to § 1320.13, but will independently assess any such information collection request to the extent that it deviates from the specifications of the rule.

Paragraph (d), which was lettered as (c) in the proposed rule, has been modified to add the words "for any reason" to conform to the language of Section 3508 of the Act, which provides: "To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary, *for any reason*, the agency may not engage in the collection of the information" (emphasis added).

One agency has objected to § 1320.4(b)(3)'s requirement that OMB ensure that collections of information by federal agencies have "practical utility." The agency argued that the Paperwork Reduction Act "was never intended to provide OMB such wide discretion in controlling the internal information needs of an agency." This comment is based upon a misunderstanding of the Act. Section 3508 of the Act provides: "Before approving a proposed information collection request, the Director shall determine whether the collection of information by an agency is necessary to the proper performance of the functions of the agency, including whether the information will have practical utility." The act vests this wide discretion in OMB in order to reduce paperwork burdens on the public that the agencies would otherwise impose.

Another agency has suggested that this section apply only to decisions regarding information collection requests, and not to other paperwork reduction clearance decisions. However, Section 3504(c) of the Act provides that "the information collection request clearance *and other paperwork control functions* of the Director shall include . . . determining whether the *collection of information* by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility for the agency" (emphasis added). The issue of clearance of collections of information other than information collection requests has been addressed above.

5. *Section 1320.5 Public Protection.* Paragraph (a) has been modified to remove redundant language, and to clarify that collections of information submitted to nine or fewer persons are not subject to OMB review under the Act. The language in the proposed rule implied incorrectly that such collections were not subject to the Act at all.

Paragraph (a) has also been reworded, at the request of the Department of the Treasury, to clarify that it applies only to information collection requests. This issue, while difficult to decide under the language of the Act, was resolved by the Director as explained in the preamble to the Notice of Proposed Rulemaking. A number of public comments have challenged OMB's interpretation of the Act, arguing that Section 3512 applies on its face to requirements to "provide" or "maintain" information, that is, to all reporting and recordkeeping requirements, however imposed. On the other hand, Section 3512 refers specifically to "information collection requests" -- a term which, as defined in § 1320.7 of this rule, does not encompass collections of information by means of regulation adopted after public notice and comment. OMB's resolution of this issue accommodates Paperwork Reduction Act processes to the requirements of the Administrative Procedure Act. For a full discussion of these issues readers are referred to the preamble to the Notice of Proposed Rulemaking. The objective of this rule is to fulfill the purposes of the Act, including public protection provisions, to the fullest extent possible given legal constraints. Many comments from the public, while differing with the legal interpretation on this point, have commended OMB's success in accomplishing this objective.

A new paragraph (b) has been added, in response to widespread public comment noting the need to protect the public against excessive paperwork requirements in regulations adopted after public notice and comment. Several agencies and members of the public have argued that OMB has no authority to disapprove collection of information requirements in rules. These arguments are addressed in connection with § 1320.4. (See also the discussion of § 1320.11.)

This section addresses the issue of the consequences of OMB disapproval of a collection of information requirement in a regulation adopted after public notice and comment. OMB has explicit statutory authority to disapprove collection of information requirements in proposed rules under Section 3504(h), and it is apparent that Congress intended such disapprovals to be fully enforceable for the benefit of the public. As OLC has advised, "The agency may not en-



gage in a collection of information that has been disapproved by OMB under [the statutory] standards, and a disapproved collection of information requirement may not be enforced against the public."

This section defines what the term "disapproval" means from the point of view of the public. Essentially, it means that agencies may not attempt to conduct or sponsor the disapproved collection, and that if they do, members of the public may not be penalized or denied a benefit for failure to comply. OMB does not anticipate that violations of the Act will often occur, but this section explains the public's rights in such a contingency.

Paragraph (b) expresses this legal conclusion: "Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any collection of information requirement if the requirement has been disapproved by OMB, unless that disapproval has been overridden by an independent regulatory agency pursuant to § 1320.19." Paragraph (b) also clarifies the status and significance of OMB control numbers on collection of information requirements in agency rules that were adopted after public notice and comment: "The absence of a control number on a collection of information requirement does not, as a legal matter, invalidate such requirement." However, the absence of a control number will serve to alert the public that either the agency has not complied with the applicable legal requirements of this rule, or OMB has disapproved the collection of information requirement. Thus, a member of the public confronting a collection of information requirement with no control number will be able to make further inquiries, and may find that the requirement is unenforceable.

Several agencies and members of the public have expressed concern over possible ambiguities in paragraph (b) of the proposed rule, which has been rewritten as paragraph (c) of this rule. The paragraph explains how paragraphs (a) and (b) affect collections of information which are imposed as the means for proving or satisfying a condition to receiving a benefit or avoiding a penalty. The paragraph has been extensively rewritten for greater clarity. As a general rule, when an agency's collection of information has been disapproved, it must permit persons to satisfy the corresponding legal conditions in any other reasonable manner. For example, if persons with annual income below a given level are eligible for a benefit, but the agency's requirements for proving income are determined by OMB to be unnecessarily burdensome, potential beneficiaries must be permitted to prove their income level in any reasonable manner (until such time as the agency establishes and OMB approves a new specific mode of proof).

Paragraph (c) as rewritten also provides rules for two specific circumstances. First, if an agency's information requirement is disapproved in whole by OMB, then the agency must provide the benefit (or refrain from imposing the penalty) to otherwise eligible persons without requesting any additional information from them. To use the above example: if, in addition to proof of income, the agency attempted to impose an additional, unrelated information requirement, and OMB disapproved it, the agency would have to grant the benefit to all qualifying applicants without requesting the additional information. Second, if an agency's information requirement is ordered modified (*i.e.*, disapproved in part) by OMB, the agency would have to permit persons to satisfy the condition by complying with the information requirement, as modified. For example, if the agency required an applicant to submit three copies of an income verification form, and OMB determined that no more than one copy was necessary, then the agency would have to grant the benefit to applicants submitting one copy of the form. Of course, once the agency has submitted, and OMB has approved, a substitute information requirement, applicants would be required to comply with it.

Thus, the public does not automatically become entitled to any particular benefit simply because at some point an unapproved collection of information was involved; rather, an individual otherwise entitled to a benefit may not be "subject to a penalty for failing to maintain or provide information" pursuant to the unapproved or disapproved collection of information.

To clarify the meaning of the public protection provision, a new paragraph (d) has been added to this section in response to questions by agencies and the public. The paragraph states that when the public protection provisions of the section apply, no penalty may be imposed by the agency directly, by the agency through judicial process, or by any other person through judicial or administrative process. This is necessary to ensure that disapproved collections of information are not enforced by direct agency action or other means. If a collection of information has been disapproved, no penalty may be imposed. Respondents are free to disregard or ignore disapproved collections of information. The purpose of the public protection clause would be vitiated if other means, such as third party lawsuits under implied or explicit causes of action, were available to enforce the disapproved collections of information.

Several members of the public have argued that absence of a control number on a collection of information requirement contained in a regulation should, in and of itself, invalidate the requirement. Whatever the merits of this point of view as a policy matter, it is precluded by OMB's interpretation of the Act. The practical effect of this rule, however,

is to provide notice to the public of possible violations of the Act through the control number system, and thus to accord protection against the unwarranted collection of information by means of regulation.

Several agencies have expressed concern that the public protection clause could result in fraud against the government or in failure to enforce statutory requirements. So long as agencies comply with the procedures and standards of the Act under this rule, no such consequences can occur. In any event, Section 3512 explicitly and unambiguously establishes the congressional policy that the public is free to ignore unapproved information collection requests.

One member of the public has suggested that paragraph (c) set forth a procedure so that respondents can understand their rights. While this comment raises an important issue, the variety of circumstances covered by paragraph (c) is so great that no specific procedure can be developed. OMB will monitor this problem to see whether future changes need to be made.

6. Section 1320.6 General Information Collection Guidelines. Many agencies and some members of the public have filed comments pointing out specific instances in which the general information collection guidelines set forth in this section might not be appropriate. OMB recognizes that these guidelines cannot serve as hard and fast rules. As stated in the preamble to the proposed rule:

OMB is well aware that the guidelines cannot and should not be strictly enforced on a blanket basis. The guidelines merely represent OMB's judgment that in most circumstances, agencies are not justified in imposing certain kinds of paperwork requirements. They will be relaxed if it is necessary to do so either to satisfy statutory requirements or to meet other reasonable needs.

In general, the public has expressed strong support for these guidelines, while proposing modifications or additions in some paragraphs. Some commenters, including the National Federation of Independent Businesses, have argued that the introductory language -- "unless it is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other reasonable need" -- is insufficiently stringent and could provide a "loophole" for agencies to conduct "business as usual." Several commenters have suggested deleting this language altogether; others have suggested substituting the words "essential" or "compelling" for the word "reasonable." OMB recognizes the potential problem, but as many agency comments show, some flexibility is needed in order to tailor these general information collection guidelines to the exigencies of particular situations. After considering the alternatives, OMB has decided to use the term "substantial" to describe the burden on an agency to justify deviation from the guidelines. OMB will diligently implement these guidelines so that exceptions are granted only where appropriate.

The language of this section's introductory paragraph has been revised to make clear that the guidelines apply to the clearance process. No decision by OMB and the agencies to deviate from the guidelines in a particular instance shall create any right to disregard an approved collection of information or any basis for challenging the effectiveness of the approval.

Paragraph (a) established as a "rule of thumb" that agencies should not require respondents to report information more often than quarterly. Many members of the public have suggested that all reporting be annual or semiannual. OMB has considered these comments in light of its experience with agency information requirements. Although in many instances annual or semiannual reporting is sufficient, quarterly reporting is frequently necessary. OMB has thus concluded that the quarterly period is a more realistic general guideline.

Several agencies and members of the public have pointed out specific instances in which reporting more often than quarterly may be necessary, for example: date industry marketing order reporting and certain health-related reporting. OMB will consider these specific instances in the context of individual clearance decisions.

Paragraph (b), as published in the proposed rule, established a guideline of 21 days for the period agencies would allow respondents to complete a written response to a collection of information. Many members of the public have commented that 21 days is not sufficient, suggesting anywhere from 30 to 90 days. OMB has accepted these comments, and altered this guideline to provide for a 30-day response time.

A number of agencies have pointed out specific instances in which the proposed 21 day limitation would be too restrictive. (These comments apply *a fortiori* to the 30 day period in the final rule.) For example, the Securities and Exchange Commission has pointed out that the 21 day timeframe would be inconsistent with certain statutory requirements, and NASA has pointed out that more timely responses may be necessary to the procurement process. The rule provides that exceptions to this guideline will be made where "necessary to satisfy statutory requirements or other substantial need." The agency concerns will thus be considered in making particular clearance decisions.

The Department of Defense has expressed concern that this guideline could interfere with oral or telephonic interviews. However, the guideline only applies to "a written response to an information collection request or requirement." It does not apply to oral or telephonic surveys.

The Department of the Treasury has noted that, since agencies often do not know when the respondent receives a collection of information, it presents administrative difficulties to measure response time from the time of receipt. OMB recognizes these difficulties. However, these guidelines have been written to the maximum degree possible to promote the convenience of the public. The public cannot be aware of when collections of information are distributed, but only when they are received. Agencies should normally be able to make reasonable judgments concerning date of receipt.

Paragraph (c) generally limits agencies to requiring submission of an original and two copies of any document. Several commenters, including Private Citizen, have specifically applauded this guideline. Five members of the public, however, have commented that agencies should make their own copies and not require the public to duplicate submissions at all. OMB has considered these comments in light of prevailing agency practice and concluded that the provision of a limited number of copies often leads to prompter and more efficient processing of the information. In some instances, service to the public could be delayed if copies are not provided. These comments have therefore not been accepted. NASA has pointed out that contractors are often paid for submitting a contractually determined number of copies of documents, and that in such instances this guideline would be inappropriate. OMB recognizes that this guideline will not always be appropriate, and will honor requests for exemptions in such circumstances.

Several agencies have suggested that this guideline not apply where the document is a carbon-interleaved form. While recognizing that use of a carbon-interleaved form may often be a proper case for an exception to this guideline, OMB also notes that the use of carbon copies can significantly increase the burden on the public by making corrections more difficult. Therefore, this comment has not been accepted.

Paragraph (e) generally prohibits remuneration of respondents, other than contractors or grantees, for responding to collections of information. Public reaction to this guideline has been mixed, with some members of the public believing that remuneration can be a good way to compensate respondents for lost time. A private research organization has commented that this guideline is contrary to Section 3501 (1) and (2) of the Act. However, the purpose of the Act and this rule is to reduce the overall paperwork burden, not to shift it from respondents to the taxpayers at large. To the extent that remuneration induces respondents and agencies to engage in unnecessary paperwork activities, it is inconsistent with the Act. This guideline is therefore an appropriate tool for enforcing the Act.

Paragraph (f), as it appeared in the proposed rule, generally prohibited agencies from requiring respondents to retain records, other than health and medical records, for more than four years. Many members of the public, and some agencies, have suggested that a three year period would be more consistent with typical statutory mandates and agency practices. These comments have been adopted.

Several agencies and one member of the public have pointed out instances in which the proposed four year limit would have been inappropriate. As with the other guidelines, OMB will consider exceptions on a case-by-case basis. The Department of the Treasury has noted that statutory record retention requirements for tax information generally exceed three years. Tax records have therefore been excluded from this guideline.

The Environmental Defense Fund has commented in opposition to this paragraph. The Fund stated that "Chapter 35 of 44 U.S.C. does not explicitly discuss record retention requirements," and that record retention requirements "do not impose additional production burdens on the public." However, the Paperwork Reduction Act specifically refers to "recordkeeping requirements," defining them as requirements "imposed by an agency on persons to maintain specified records." 44 U.S.C. 3502(16). The Fund's view that recordkeeping requirements are not serious burdens on the public is not shared by Congress, which listed *inclusion* of recordkeeping within the clearance process as one of the six key ways in which it had strengthened the prior Federal Reports Act. S. Rep. No. 96-930, at 13. Nor is it shared by the public, judging from the volume of comments applauding this guideline or suggesting that it be strengthened. OMB cannot accept any suggestion that it cease or ease enforcement of the Act with respect to recordkeeping requirements. Of course, a guideline of any particular time period for recordkeeping can have an appearance of arbitrariness, but the three year period chosen is in conformity to most legitimate agency needs.

Paragraph (g) generally prohibits collections of information in connection with statistical surveys not designed to produce results that can be generalized to the universe of study. One member of the public has suggested requiring a specific sampling procedure, but OMB has concluded that this degree of specificity would not be consistent with the variety of agency needs and practices. Another member of the public has suggested that OMB strengthen the guidelines

by requiring agencies to agree to aggregate information before releasing it to the public. This concern for confidentiality of information had been directly addressed by adding a new paragraph (i), discussed below.

The Environmental Protection Agency has commented that the intent of this paragraph is unclear and proposed a rewording: "in connection with a survey that is not designed to provide statistically reliable and valid data in response to an agency's program requirements." This comment has not been accepted for two reasons. First, OMB concluded that the term "can be generalized to the universe of study" is more precise and less subjective than the term "statistically reliable and valid." The intent of paragraph (g) is that the data must be quantifiable, testable, and demonstrable. Second, the proposed language would confine the judgment concerning reliability and validity to the relationship of the data to the "agencies' program requirements." As the legislative history of the Act establishes, however, general purpose statistics may be collected by agencies for general agency or public use, without reference to particular program requirements.

The Department of Health and Human Services has proposed amending paragraph (g) to refer to results that can be "generalized to the whole population under survey" instead of "generalized to the universe of study." This comment has been rejected, because the principal focus of a collection of information should be on the universe of study and not merely on the universe under survey. A study does not generally have practical utility if its results have no bearing upon the group about which information is being sought, regardless of how much information may be collected about the survey population.

Paragraph (h) generally requires agencies to take all practicable steps to develop separate and simplified requirements for small businesses and other small entities. Agencies and the public generally favor this provision, although several, including the National Federation of Independent Businesses, have suggested more detailed definitions or linkages to the Regulatory Flexibility Act. OMB has concluded that more precise definitions would not be helpful in this context. Although the aims of the Regulatory Flexibility Act and of this rule are similar, there is no explicit legal connection between paragraph (h) and the Regulatory Flexibility Act. Nonetheless, the interests of small businesses and other small entities will be greatly furthered by implementation of this rule, since federal paperwork burdens are one of the major impediments to economic activity by small entities.

OMB has adopted two additional guidelines proposed by the public. A new paragraph (i) has been added that generally prohibits agencies from requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to guarantee its confidentiality to the extent permitted by law. One of the most serious burdens associated with federal information collection activity is the possibility that information collected under a promise of confidentiality may be inappropriately released to other persons, either inadvertently or as a result of insufficient administrative protections. Procedures for precluding inappropriate release can significantly diminish this burden. Of course, this guideline does not alter any legal obligation of an agency to release information under the Freedom of Information Act or other pertinent law.

A new paragraph (j) has also been added, generally prohibiting agencies from requiring respondents to maintain or provide information in formats other than those in which the information is customarily maintained. This guideline's practical effect is to encourage agencies to make use of computer and other electronic data processing technologies for formats used by respondents, instead of requiring hard copies or other costly format changes.

*7. Section § 1320.7 Definitions.* (a) *Agency § 1320.7(a).* A paragraph has been added incorporating the Paperwork Reduction Act's definition of agency.

(b) *Burden § 1320.7(b).* A comment by Eaton Corporation, W. R. Grace & Co., and Monsanto Company has pointed out that a major component of burden, not explicitly addressed in the proposed definition, is the time taken by lawyers, accountants, and other professional personnel to review submissions of information to federal agencies. OMB has therefore added to this definition the following phrase: "to review its accuracy and the appropriateness of its manner of presentation."

A commenter has suggested that OMB add the word "effort" to the definition of "burden" to conform more closely to the language of the Act. OMB agrees and has revised the wording of paragraph (b) accordingly. Other word changes have been made to subparagraph (b)(1) to improve clarity. These have not modified the substance of the definition.

The Environmental Defense Fund has suggested removing burdens of information collection activities conducted by states in administering federal regulatory programs from coverage of the Act and this regulation. The Business Advisory Council on Federal Reports (BACFR) and Conoco, Inc. express a contrary view. BACFR has stated that exclusion of burden "to the extent that such State or local requirement would be imposed even in the absence of a federal burden"

is inappropriate. OMB believes the federal government imposes a burden when it causes another entity to impose or request a collection of information to meet a federal request or requirement. However, if a state exercises its sovereign authority to impose an incremental collection of information beyond that needed to fulfill its responsibility to the federal government, the resulting increment of burden is attributable to the state, not the federal agency. Absent a showing that the state has exercised sovereign authority to impose a collection beyond that needed to meet the federal purpose, the entire burden of the state collection is presumed to be the responsibility of the sponsoring federal agency.

Several agencies have stated that the definition of burden should exclude the time, effort, or financial resources required to conduct tests, inspections, or other activities antecedent to the requirement or request for recordkeeping or reporting. They take this view on the basis that many such activities are integral to their functions. However, as discussed in the preamble to the Notice of Proposed Rulemaking, the burden of a federal collection of information is far greater than the mere time required to record information or to fill out a particular form. For example, the time involved in filling out a tax return is far greater than merely the time spent penning numbers on the form. A proper estimate of "burden" will include the time necessary to keep and compile information, make necessary calculations, and the like. Similarly, the burden of a government request for the reporting of test data properly includes the burden of obtaining the information -- including conducting the tests -- as well as the mechanical burden of conveying it to the government. It is true that testing and like activities are often integral to an agency's mission. The same is true for other aspects of the collection of information. That is why Congress formulated the "practical utility" test to be applied by OMB -- whether "the collection of information is necessary for the proper performance of the functions of the agency." 44 U.S.C. 3504(c)(2), 3508. To exclude the burden of activities necessary to comply with a collection of information would grossly underestimate the actual burden of federal paperwork; to include it for clearance under the "practical utility" test will ensure that federal collections of information impose the least burden necessary for the proper performance of agency functions.

OMB recognizes that the testing component would not be covered and counted as burden under the Paperwork Reduction Act unless the agency requested or required respondents to record or report the results of the tests. OMB believes that this introduces an incentive for agencies to minimize their paperwork requirements while achieving their objectives. Performance standards that specify the results to be obtained without requiring paperwork may, in many instances, achieve the desired results without creating unnecessary paperwork.

Various agencies have asked OMB to prescribe a methodology for estimating burden in the regulation, and a public comment has suggested that burden be separately estimated for different categories of respondent. As discussed in the Notice of Proposed Rulemaking, OMB provides information about burden estimation methodology to agencies in various ways. Moreover, the basis for burden calculations varies widely, depending on the nature and subject of the collection of information and the respondent population. OMB believes that it is more appropriate to allow agencies to estimate burdens in the first instance, subject to OMB review. Comprehensive guidance on burden estimation may be provided as experience grows.

Agency burden estimates must, as one public comment suggests, consider each significant category of respondent to the collection of information. The burden of a question posed to a person with a sophisticated computerized information system already containing the needed data differs significantly from the burden of the same question posed to a person who must search files and manually compile the information. Final estimates of burden should take each situation into consideration.

To obtain such estimates, some agencies may think it appropriate to conduct burden measurement studies. For example, the Treasury Department is conducting a useful baseline burden study designed to improve burden estimates and identify means of reducing burden. On the other hand, burden measurement studies are inconsistent with Paperwork Reduction Act principles in many instances. If not carefully constructed, the studies produce unreliable data, and add to the burden of the underlying collection. OMB believes that such activities should rarely be undertaken, and then primarily to assist in determining how a burden can be reduced, not merely to improve calculations of burden.

(c) *Collection of Information § 1320.7(c)*. OMB has received extensive comments from the public and federal agencies concerning the definition of collection of information. As a general matter, the public favors a definitional approach that would extend the coverage of the Act as far as possible, while the federal agencies argue that OMB's proposed definitions were too expansive. Issues regarding the Act's application to the following have drawn significant comment: (1) labeling and disclosure requirements, (2) audit guides, and (3) requests for proposal or other procurement requirements.

(1) *Labeling and Disclosure Requirements:* OMB's Notice of Proposed Rulemaking set forth the basic rationale supporting inclusion of labeling and disclosure requirements as collections of information covered by the Act. 47 FR 39519-20. Several commenters, however, have expressed the view that the Act applies only to collections of information actually submitted to or filed with an agency. In their opinion, the filing of a document with the agency is a necessary jurisdictional "trigger" for OMB review.

OMB cannot agree with this constricted view of the Act. The primary purpose of the Act is not, as these commenters argue, to reduce paperwork provided to the federal government. Rather, it is "to minimize the Federal paperwork for individuals, small businesses, State and local governments, and other persons." 44 U.S.C. 3501(1). Federally required paperwork is just as burdensome when it must be disclosed to third parties or affixed to a label on a product as when it must be filed with the federal government. Under the contrary argument, a collection of information would be covered by the Act if the agency required one copy of a form to be filed with it, but would not be covered if the agency instead ordered that the form be mailed to all interested third parties -- an approach that would vastly *increase* the burden of the requirement. An agency could avoid Congress' paperwork control measures and impose excessive information collection burdens on the public simply by removing the "paperwork trail" leading to its own files and imposing third party disclosure and labeling requirements instead.

The Act neither requires nor permits such an illogical and counterproductive result. Its definition of "collection of information" refers to an agency's "obtaining or soliciting of facts or opinions." 44 U.S.C. 3502(4). That the word "solicit" encompasses information collection activities whether or not the federal government will ever "obtain" the information is evident from the disjunctive "or" in the quoted definition. Moreover, the contrary argument proves too much, since the Act clearly covers "recordkeeping requirements" which, by their nature, involve no filing with the federal government. If the Act covered only paperwork provided to the federal government, recordkeeping requirements would not be covered.

It would be equally illogical to assume that recordkeeping requirements are the *only* "collections of information" not actually provided to the agency. For example, a requirement to prepare a document and file it would be covered by the Act, but a requirement to prepare the identical document and post it or otherwise make it publicly available would not.

The Department of the Treasury acknowledges that the Act applies to "a disclosure requirement which implicitly requires the collection of . . . information", but has suggested that some disclosure requirements do not require any collection of information and for that reason are not covered by the Act. OMB agrees with this comment. Any agency's "obtaining or soliciting of facts or opinions" from the public is the keystone of the definition of "collection of information." Some disclosure requirements do not involve any such action. An example is the warning label on cigarette packages. Although the label is a federally-mandated disclosure, no collection of information is involved, since the persons subject to the requirement need only transmit to the public information supplied by the federal government. The September proposal specified that OMB's definition of collection of information does not cover this type of disclosure or labeling requirement. See 47 FR 39520. Some members of the public have argued that the Act covers labeling or disclosure requirements of this type, but OMB has not accepted these comments because the mere transmittal of information supplied by the federal government is not a "collection of information." Language has been added to the definition to make clear that disclosure and labeling requirements are covered only to the extent that they implicitly or explicitly require a person to collect information for the purpose of the disclosure or labeling.

(2) *Audit Guides:* A number of agencies have argued that the definition of collection of information should not include audit guides because they typically require no information from the public other than that required under other, approved reporting or recordkeeping requirements. These agencies add that many audit guides are non-public and thus do not themselves impose any requirements on the public, and that audit guides are often used in the context of an administrative action or investigation exempted from coverage pursuant to § 1320.3 of this regulation.

OMB believes these comments are well taken and has deleted the reference to audit guides from the definition. This does not mean that an audit guide cannot contain a collection of information covered by the Act. For instance, a public audit guide specifying records to be examined during the course of an audit can constitute a collection of information under the Act if it lists records beyond those required by an approved recordkeeping requirement. However, based on the comments received, OMB believes that this is an unusual circumstance, and that audit guides typically involve recordkeeping requirements established independently and covered by the general provisions of this rule. For this reason, separate reference to audit guides in the regulation would have been potentially misleading or confusing.

(3) *Requests for Proposal or Other Procurement Requirements:* Several agencies have objected to the proposed rule's coverage of procurement activities. On the other hand, the National Federation of Independent Businesses praises this aspect of the September proposal, saying, "Procurement-related paperwork is a major hurdle which many small firms simply cannot overcome \* \* \*. We strongly recommend that OMB resist agency pressure to delete procurement paperwork requirements from its purview."

OMB has reviewed the concerns of the federal agencies on this issue very carefully. The comments provide no basis for exempting procurement-related collections of information from the Act. Most were based on an inaccurate understanding of what OMB's regulation will require. OMB does not intend to review individual contracts or individual requests for proposal. Rather, OMB will review agencies' general procurement activity formats. This will ensure that the purposes of the Act are fulfilled without delaying the procurement process.

(4) *Other:* Additions to the September proposal have been made clarifying OMB's intent that the regulation cover information collection activities conducted through circulars, directives, instructions, bulletins, and standard questionnaires used to monitor compliance with agency requirements. Several redundant terms have been deleted from subparagraph (c)(1) of § 1320.7. Other changes in this definition are purely editorial.

(d) *Collection of Information Requirement § 1320.7(d).* OMB has deleted the paragraph in the proposed rule defining "information collection requirement" and substituted a new paragraph (d) defining "collection of information requirement." This term, which appears in Section 3504(h) of the Act but which is not separately defined, refers to collections of information specifically contained in regulations adopted after public notice and comment. The Act provides separate mechanisms for the review and approval of collection of information requirements as opposed to information collection requests. These differences are detailed in §§ 1320.13 and 1320.12, respectively. The primary distinction is that Section 3504(h) of the Act governs the review and approval of collection of information requirements. This section accommodates OMB's paperwork review functions with the notice and comment rulemaking requirements of the Administrative Procedures Act.

It should be noted that the term "collection of information requirement" covers only collections of information specifically contained in an agency rule that is promulgated pursuant to notice and comment. It does not cover collections of information contained in "rules" adopted through means other than notice and comment rulemakings -- e.g., rules promulgated pursuant to one of the exemptions from notice and comment rulemaking contained in Section 553 of the APA. The reason for this limited coverage is that Section 3504(h) applies *only* when an agency publishes a notice of proposed rulemaking and requests public comments." 44 U.S.C. 3504(h)(8) (emphasis added). The term "collection of information requirement" is used solely in connection with Section 3504(h), and does not apply to other agency issuances not within its purview.

It should be noted that a form specifically incorporated in a regulation adopted after notice and comment rulemaking is a collection of information requirement subject to the review provisions of Section 3504(h). At first glance this distinction between forms that are "collection of information requirements" and forms that are "information collection requests" -- a distinction that turns entirely on whether the form is specifically contained in a notice and comment regulation -- appears potentially confusing for members of the public. This confusion, in turn, could threaten the integrity of the Act itself by undermining the public protection clause, which by its terms applies only to "requests" and not "requirements."

As discussed above, OMB has addressed these problems by providing a uniform scheme requiring control numbers on all collections of information, whether "requirements" or "requests." Thus, the public will not need to investigate whether a form is specifically incorporated in a regulation, because it can readily determine whether the form bears a control number. The distinction between "requests" and "requirements," therefore, is primarily relevant to the procedures that OMB and the agencies must follow, and not to the more fundamental aspects of the Act, such as how the public is informed of whether OMB has approved or disapproved a particular collection of information.

(e) *Director § 1320.7(e).* "Director" has been defined to include the Director's designee, who for purposes of the Act is the Administrator of the Office of Information and Regulatory Affairs.

(f) *Display § 1320.7(f).* A number of minor changes have been made in this paragraph to improve clarity. Most significant was the addition of the phrase "(as part of the regulatory text or as a technical amendment)" into subparagraph 7(f)(2) to indicate more clearly that OMB intends for agencies to incorporate OMB control numbers into the text of regulations so that the numbers will appear in the regulations as published in the Code of Federal Regulations. Publi-

cation of control numbers in the preamble to regulations would not have accomplished this purpose. This paragraph reflects current OMB practice.

A commenter has suggested that collections of information display the agency's estimate of burden on the form. OMB has decided not to require such display because it might tend to confuse rather than assist many respondents. Those who would find such information useful can obtain it by asking the issuing agency. Section 1320.11 (a) and (b) describe the information to be provided by agencies to any person making such a request.

Several agencies have suggested that OMB not require the display of expiration dates of OMB control numbers. The Small Business Administration takes an opposite view and recommends that "where reasonably practicable, the OMB control number's expiration date be indicated along with the control number." Since the "public protection" clause of the Act (44 U.S.C. 3512) requires the "information collection request to display a current control number" there must be a convenient way for the public to ascertain whether the control number is current. Displaying the expiration date on the request accomplishes this.

OMB recognizes, however, that under some circumstances display of the expiration date would not serve any useful purpose and might instead create confusion and unnecessary cost to the public. An example would be an annually revised form, such as a tax form, which applies to transactions within a particular year but which may be filed during many years. The regulation provides for appropriate treatment of such exceptional cases. At the suggestion of a public comment, OMB has changed the definition to make it clear that the expiration date must appear on a collection of information *unless* OMB determines it to be inappropriate. This indicates that the general rule is for display of the expiration date, with exceptions to be made only where appropriate. OMB believes that the display requirement in this paragraph strikes an appropriate balance between the administrative needs of federal agencies and the public's need to know when a control number expires.

Collections of information published in the form of regulations need not display expiration dates, since such issuances do not necessarily expire on a date certain, but will be extended without change either for another full period, or for such time as may be necessary to accomplish a regulatory change.

Several comments have been received concerning OMB's authority to require that control numbers be displayed on collection of information requirements. That issue was discussed in Section 4 of this preamble.

(g) *Independent Regulatory Agency § 1320.7(i)*. A definition of "independent regulatory agency" has been added to the regulation. It follows the statutory definition and specifically includes the National Credit Union Administration in the list of independent agencies. OMB will, as the Act and Section 1320.19 of this regulation require, add other agencies to the list should new legislation designate them to be an independent regulatory agency or commission.

(h) *Information § 1320.7(k)*. This subsection contains the general definition of "information" as well as several specific exclusions from that definition. One member of the public has requested that oral requests be explicitly included in the general definition. OMB has accepted this comment and for the same reason has added the term "oral communication" to the definition of "information collection request."

The introduction to the list of exclusions has been changed to clarify the list's general nature. Some specific cases will require an exercise of judgment, rather than rote application of the words of the rule.

The purpose of the exclusion in paragraph (1) for affidavits, oaths, changes of address and acknowledgments is to exempt routine agency activities that request simple identification of the recipient. Some commenters have expressed concern that the language in the proposal would exempt activities such as "representations and certifications" used not to identify the respondent, but to gain information to determine the applicability of various federal regulations. According to the University of California Systemwide Administration, "'reps and certs' are often voluminous and may need to be completed literally hundreds of thousands of times each year by large institutions." This exclusion is intended to cover only representations or certifications imposing no burden beyond that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument. This is generally consistent with OMB practice under the Federal Reports Act. A change in the language has been made to clarify this point.

A clause has been added to paragraph (3) -- "or through nonstandardized oral communication in connection with such direct observations." This is in response to comments by the Department of Agriculture concerning the need for oral communication during the course of inspections.



With respect to paragraph (4), one commenter has suggested that solicitations for hearings also be excluded from the definition of information. OMB agrees and has incorporated that exclusion in new paragraph (8).

Paragraph (5) has been amended to exclude facts or opinions obtained in connection with medical research as well as in connection with the treatment of a clinical disorder. This change responds to a comment by the University of Southern California School of Medicine.

Some commenters have pointed out that the language in subparagraph (6) of the proposed rule was vague. OMB has revised the language to clarify that it applies only to requests addressed to a single person. Agencies should be prepared to inform respondents upon request that the solicitation is not covered by the Act.

Finally, subparagraphs (7), (8), and (9) have been added in response to comments. Subparagraph (7) responds to comments by several agencies arguing that aptitude tests and similar activities not be included within the definition of information. OMB agrees that Congress did not intend to cover such activities and indeed they were excluded from coverage under Circular A-40. Subparagraph (8) clarifies that collections of information in connection with public hearings and other meetings are not covered, and paragraph (9) is self-explanatory.

(i) *Interagency Reporting Requirement § 1320.7(m)*. Non-substantive changes have been made in this definition, and are intended solely to improve clarity.

(j) *Modify § 1320.7(n)*. At the suggestion of the Business Advisory Council on Federal Reports, the word "modify" has been used, in addition to such terms as "approve" and "disapprove," to signify types of OMB clearance decisions. This new paragraph defines the term "modify" as "to approve in part and disapprove in part." Including the term "modify" is not intended to expand the substantive authorities of OMB, but to provide convenient terminology for the frequent instances in which OMB will approve a submitted collection of information only in part, or upon modification.

(k) *Person § 1320.7(p)*. In response to a request for clarification, the term "person" has been defined to include "operations of government-owned contractor-operated facilities." Such operations are specifically excepted from the statutory definition of "agency," see 44 U.S.C. 3502(1). Since they are not agencies, but are private businesses falling within the purposes of the Act, they are covered as "persons."

(l) *Practical Utility § 1320.7(q)*. A number of public comments suggest expansion of the definition of practical utility to include the following concepts: that the value of the collection should exceed its burden, that the agencies must demonstrate that they actually use the information on a timely basis, and that the information is necessary for the proper performance of the agencies' function. Other public comments suggest that the test of practical utility for certain types of collections of information, such as those conducted to obtain general purpose statistics or to obtain data needed for research into specific areas of inquiry, should be different from that applied to other collections of information. In addition, some agencies have pointed out that recordkeeping requirements imposed by federal agencies could never meet the test of practical utility published in the proposed regulation.

OMB agrees with these comments, and has made two modifications to accommodate them. The first adds "demonstrates actual timely use for" to the sentence describing what factors OMB will consider in determining whether the collection of information has practical utility. The second adds the words "or recordkeeping requirements" to the last sentence of the subsection, shifting the practical utility test for recordkeeping requirements from one of actual use to "uses that can be demonstrated." This is the same as the test applied to general purpose statistics.

The regulation if read as a whole already incorporates the other concepts suggested by the commentors. Clearly some collections, such as general purpose statistics, cannot be shown to have practical utility with respect to a specific program; but they do have practical utility in the sense that they serve many governmental and public purposes and the agency can demonstrate that the statistics are used by others. Research studies conducted by various agencies (e.g., the national institutes) may have practical utility because they further the mission of the agency by obtaining data necessary to determine the current state and causes of various human, economic, or social problems, and assist in the development of policy. Other studies which do not serve these purposes, but which are proposed simply to further the general body of knowledge, can also be useful and important. However, to the extent that the federal government devotes the public's resources to such studies, the studies must be specifically authorized by statute or conducted pursuant to an agency's program as specifically authorized by law.

(m) *Recordkeeping Requirement § 1320.7(r)*. The Federal Reserve Board comments that the definition in the proposed rule is too broad since it includes records not provided to an agency. OMB cannot accept this approach, because the Act defines "recordkeeping requirement" as "a requirement imposed by an agency on persons to maintain specified

records" without regard to whether the records must be sent to an agency. *44 U.S.C. 3502(16)*. It would be particularly inappropriate to constrict the statutory definition of "recordkeeping requirement" since Congress identified the inclusion of all such requirements within the clearance procedures of the Act as one of the six main changes in the law that strengthened the Federal Reports Act. S. Rep. No. 96-930, at 13.

(n) *Sponsor § 1320.7(t)*. An agency has suggested that OMB clarify the definition of "sponsor" to indicate more clearly whether cooperative agreements with state and local governments or other persons involving the collection of information are covered by the definition. Such collections are deemed to be sponsored by the cooperating Federal agency, and a change has been made in this paragraph to make this clear.

(o) *Ten or More Persons § 1320.7(u)*. A number of federal agencies have requested clarification on whether the "presumptions" contained in the September proposal were rebuttable. Comments from the public have generally supported nonrebuttable presumptions (e.g., Comments of the Association of Records Managers and Administrators, Inc.), while comments from the agencies have generally favored making the presumptions rebuttable.

The final rule specifies that there is a nonrebuttable presumption that collections of information contained in a rule of general applicability involve ten or more persons. It is true, as some agencies have pointed out, that some regulations are initially addressed to a population of less than 10 persons -- one example given was of a regulation affecting a small number of fishermen. However, rules of general applicability are, by definition, not addressed or limited to specific individuals; they bind all people who in the future may come within the scope of the regulation. While a regulation, when promulgated, may affect less than ten people, the potential universe of coverage is not so limited.

The word "deemed" is used to denote a nonrebuttable presumption.

Regarding collections of information addressed to a substantial majority of an industry, however, OMB agrees with the agency comments suggesting that the presumption be rebuttable, since the number of respondents can, in some instances, be clearly shown to be less than ten. The word "presumed" -- in contrast to the word "deemed" -- should be interpreted as denoting a rebuttable presumption. Also, OMB has eliminated the reference to the Standard Industrial Classification Manual since those classifications are not directly relevant to the issue of "person" under the Act.

8. *Section 1320.8 Agency Head and Senior Official Responsibilities*. This Section is patterned closely on statutory requirements. The only public comments on it have been favorable. Several agency suggestions have been considered and rejected.

The Small Business Administration urges that this Section specifically refer to the small business protections of § 1320.4(b) and 1320.6. In fact, § 1320.8(a)(2) explicitly requires that the Senior Official shall "independently assess all collections of information to ensure that they meet the criteria specified in § 1320.4(b)." Since § 1320.4(b) refers, in turn, to § 1320.6, no change is needed to accomplish the objectives sought by the Small Business Administration.

The Farmers Home Administration of the Department of Agriculture has protested that § 1320.8(c), which requires agencies to make their "services, personnel, and facilities available to OMB" under certain circumstances would "provide OMB too much authority to accomplish paperwork reduction at the expense of the central program responsibilities." This provision, however, merely implements Section 3515 of the Paperwork Reduction Act, and does not expand OMB's authority.

The reference in paragraph (c) of the proposed rule to *44 U.S.C. § 3502* has been deleted, because the term "independent regulatory agency" is separately defined in the Act and in § 1320.7(i) of this rule.

9. *Section 1320.9 Delegation of Approval Authority*. A number of agency and public comments have requested more specific criteria for OMB's decision to delegate approval authority. Consequently, a new paragraph (b) has been added to provide that no delegation of review authority will be made unless the agency can demonstrate that the Senior Official is sufficiently independent of program responsibility to make a fair evaluation of proposed collections of information and has sufficient resources to discharge such responsibility effectively. Several members of the public have expressed concern that delegations of approval authority be the exception and not the rule. OMB agrees that it is necessary to use caution, but anticipates that such delegations will be useful and appropriate in many instances.

Several members of the public have suggested that they be advised when a delegation takes place. Paragraph (a) of this section requires OMB to comply with Administrative Procedure Act notice and comment procedures before delegating approval authority. These procedures involve full notification of the public through the Federal Register, with an

opportunity to comment. OMB will, of course, consider all public comments when making individual decisions on delegations.

The Department of Commerce has objected to paragraph (c), which was originally denominated paragraph (b) in the proposed rule, concerning rescissions of delegations of authority. OMB has not accepted this comment, because the Act requires that OMB "shall retain authority to revoke such delegations, both in general and with regard to any specific matter." 44 U.S.C. 1307(e).

10. *Section 1320.10 Information Collection Budget.* Most public comments strongly support this section of the rule. One commenter, for example, describes it as an "absolute must." Another has proposed that exemptions should be deleted completely. This suggestion has been rejected, because of circumstances peculiar to several very small agencies. However, OMB is in accord with the spirit of the comment and will only rarely grant exceptions to the Information Collection Budget requirements.

Two organizations have expressed misgivings about this section. The Environmental Defense Fund comments that "the entire concept of the ICB [Information Collection Budget] is . . . intrinsically disharmonious with the Act," and that the "effect of the ICB is to set a paperwork ceiling for each federal agency above which it may not authorize any additional collections of information without slashing pre-existing ones to an equal degree." The fund goes on to suggest that the Information Collection Budget process "allows for no review of information collection proposals on their individual merits."

These comments are based on a serious misunderstanding of the Act and the Information Collection Budget process. The effect of the provision is to require each agency to make a comprehensive estimate of the "paperwork budget" for the succeeding year, so that the agency and OMB can assess and enforce information priorities. This is entirely harmonious with congressional enactment of statutory "goals" for the reduction of paperwork by 15% the first year, 25% by the second year. 44 U.S.C. 3505(1). Obviously, a serious attempt to attain such goals and to monitor progress toward them requires a device such as the Information Collection Budget.

An increase in an agency's total paperwork budget for a given year is possible when justified. Contrary to the Fund's interpretation, there is no rigid "paperwork ceiling." If, during the course of a fiscal year, an agency discovers the need for a new collection of information, it must make every effort to reduce the overall burden on the public by reducing the burden of other collections. If this is not possible, however, the rule permits the agency to "obtain supplemental authorization for the additional collection." This is consistent with the statutory goals of Section 3505(1). As observed in the legislative history, the goals are "not binding," but are nonetheless "reasonable and obtainable." S. Rep. No. 96-930, at 12. Similarly, OMB has not treated the Information Collection Budget allocations as strictly "binding." Nevertheless, experience has borne out Congress' expectation that the goals are "reasonable and obtainable": in fact, OMB has significantly exceeded the statutory goals in the first two years, reducing paperwork burdens in effect when the Act was passed by 29%.

Furthermore, in addition to achieving specified paperwork reduction goals, the Act requires OMB to coordinate agency information practices with review of budget proposals, 44 U.S.C. 3504(b)(3), evaluate progress toward its statutory paperwork reduction goals, 44 U.S.C. 3505(1), and report to Congress on estimated burdens of collections of information by agency and by categories within agencies, 44 U.S.C. 3514(a)(3). The Information Collection Budget is a management tool enabling OMB to carry out these statutory responsibilities.

The Information Collection Budget provisions of this rule are thus reasonably related to the purposes of the enabling legislation, and are therefore authorized under Section 3516 of the Act. See *Thorpe v. Housing Authority*, 393 U.S. 268, 280-281 (1969); *Action on Smoking and Health v. Civil Aeronautics Board*, No. 79-1044, slip op. at 5 (D.C. Cir., Jan. 28, 1983). Indeed, it is difficult to imagine how these responsibilities could be fulfilled at all without a mechanism similar to the Information Collection Budget.

Moreover, contrary to the Fund's comments, the legislative history of the Act explicitly recognizes and endorses the Information Collection Budget procedures conducted by OMB under predecessor authority. The Senate Report states that "the agency estimates of total number of hours required to fulfill requests for information that have been generated to comply with the President's Executive Order 12174 on Paperwork can serve as means to establish a meaningful base." S. Rep. No. 96-930, at 12. Executive Order 12174 (since revoked) first established the Information Collection Budget. The procedures outlined in this section of the rule are in most essentials a continuation of the Executive Order 12174 program. Congress intended paperwork burden estimates to continue to be made by means of this procedure.

There is no suggestion whatever in the legislative history that the Information Collection Budget, of which Congress was well aware, should be discontinued.

The Fund has also expressed concern that the Information Collection Budget would "enable OMB to avoid its statutory responsibilities under the Act." It suggests that "OMB need never 'scrutinize' anything. No findings of 'necessity' or 'practical utility' need ever be made. No forms need ever be approved by OMB, nor any proposed regulations examined." As the remainder of this rule makes clear, OMB is not in any way avoiding its statutory obligations by means of the Information Collection Budget. The Information Collection Budget is a supplementary planning and management process, not a substitute for case-by-case scrutiny of individual collections of information. The Fund may, therefore, be assured that OMB will exercise its other responsibilities and authorities to promote the public interest in reducing unnecessary federal collections of information.

Public Citizen and the Federal Communications Commission also object to the Information Collection Budget on grounds similar to those of the Environmental Defense Fund. In addition, Public Citizen has contended that the Information Collection Budget could operate in a manner inconsistent with the Administrative Procedure Act or other statutory requirements. To the contrary, the Information Collection Budget is a management device for identifying information collection activities that will be reduced as appropriate through specific future actions. To make actual reductions, the agencies and OMB will go through all applicable procedures and comply with all other legal requirements, including the Administrative Procedure Act where appropriate. The Information Collection Budget is not a substitute for these procedures, and is in no way inconsistent with them, whether the collection of information is conducted by means of an agency rule, a form, or another agency issuance.

Several agency comments raise other problems or questions regarding this section. The Federal Communications Commission argues that the section would be "very difficult to administer" for various reasons. However, OMB and the agencies have had several years of experience with the Information Collection Budget, and have been able to work out solutions to problems of administration as they arise. Indeed, the Commission itself has been one of the most successful of the Independent regulatory agencies in using the Information Collection Budget as an internal management device for controlling and reducing paperwork.

The Department of Health and Human Services has suggested that when an agency is within its Information Collection Budget allocation, it should have the flexibility to engage in new information collection activities without amending the budget. This comment correctly reflects the intent of the rule. Subject to OMB clearance of individual collections of information, an agency is free to adjust its information activities so long as it is within its annual Information Collection Budget allocation.

11. *Section 1320.11 Agency Submission of Collections of Information.* This section establishes review procedures for all collections of information, however imposed. It also serves as an index to additional procedures applicable to particular types of collections of information pursuant to §§ 1320.12, 1320.13, 1320.14, 1320.15, and 1320.17.

In addition to specific comments addressed below, several agencies and many members of the public have made extensive comments concerning the overall scheme of this section, particularly as it relates to collections of information in current regulations. The Business Advisory Council on Federal Reports, joined by many other members of the public, takes the view that all collections of information except those contained in a Notice of Proposed Rulemaking are "information collection requests" subject to the same procedural mechanisms for OMB review and approval as are all other requests. Other members of the public support the approach of this rule as the best available means for reviewing and reducing the burden of reporting and recordkeeping requirements in existing regulations. On the other hand, the Department of the Treasury and several other agencies have argued that the procedures laid out in the proposed rule exceed OMB authority. Several members of the public also take the position that OMB has no authority under the Paperwork Reduction Act to review collections of information in regulations that were promulgated prior to the effective date of the Act.

These are difficult questions of law. The procedures in this final rule are the product of consultation with the Office of Legal Counsel of the Department of Justice (OLC), consultation with affected agencies, and careful review of the arguments submitted to OMB in response to the September 8, 1982 Notice of Proposed Rulemaking. Much of the background of this issue is presented in the preamble to that notice, and is incorporated by reference herein.

Several aspects of this issue have already been addressed in this preamble. In Section 4, it was explained that all reporting and recordkeeping requirements are covered by the Act, without exemption for reporting or recordkeeping requirements contained in current rules, and that this rule properly requires the display of OMB control numbers on all

such requirements. The remaining issue is the procedural mode by which reporting and recordkeeping requirements in currently valid rules must be cleared by OMB.

The position of the Business Advisory Council on Federal Reports (among others) has not been adopted. Essentially, as explained in the preamble to the proposed rule, OMB has recognized that a new procedure is needed for clearance of reporting and recordkeeping requirements in current rules. The procedure set forth in Section 3504(h) of the Act (which corresponds to § 1320.13 of this rule) applies by its terms only to reporting and recordkeeping requirements in proposed rules undergoing public notice and comment procedures. The procedures of Section 3507 of the Act (corresponding to § 13.12 of this rule), while by their language applicable to reporting and recordkeeping requirements, would lead to serious legal difficulties if applied to such requirements in current rules. Most significantly, it might be inconsistent with the Administrative Procedure Act of OMB to be able effectively to rescind a provision of a regulation adopted after public notice and comment. This conclusion, which was reached after due consideration of advice provided by the OLC, has led OMB to adopt a procedural mechanism that will both ensure full review of the paperwork burden imposed by current regulations and observe the strictures of the Administrative Procedure Act.

Other commenters have seized upon the inapplicability of Section 3504(h) and Section 3507 procedures to argue that somehow Congress intended to exempt reporting and recordkeeping requirements in current rules from Paperwork Reduction Act review altogether.

This result would be highly illogical, since -- as Section 4 of this preamble points out -- the Congress intended the review and reduction in burden of all reporting and recordkeeping requirements, many of which appear in current rules. The Act not only does not compel this illogical result, but fully supports the procedures adopted by OMB to avoid it.

The Act provides ample authority for OMB's adoption of the procedures of § 1320.14 of this rule. In addition to the broad grants of authority found in Section 3504(a), 3506(a), 3516, and 3518(a) -- in themselves an ample legal basis -- Section 3504(b)(2) and 3504(c)(2), in conjunction with Section 3504(h), establish a specific and workable scheme for reviewing reporting and recordkeeping requirements in current regulations. This rule follows that statutory path.

Section 3504(b)(2) grants OMB the authority to "initiat[e] proposals for changes in \* \* \* regulations." The standards applicable to this paperwork control function are further defined in Section 3504(c)(2), which provides:

The information collection request clearance and other paperwork control functions of the Director shall include -- \* \* \* (2) determining whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility for the agency.

Several points should be noted about this section. First, it applies to the Director's "other paperwork control functions" in addition to his "information collection request clearance" function. Moreover, the substantive standard of Section 3504(c)(2) applies to "collections of information" -- *i.e.*, collection of information requirements as well as information collection requests. Significantly, this standard -- the "practical utility" test -- is identical to that specified in Section 3508: "Before approving a proposed information collection request, the Director shall determine whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility." These provisions thus establish that OMB is to apply the same substantive standard to all collections of information in the course of its paperwork control functions that it does for *approval* of information collection requests. In practice, this means that OMB will apply the "practical utility" standard to reporting and recordkeeping requirements in existing rules, and will either "approve" (if the requirements meet the standard) or "initiate proposals for change" (if they do not).

A decision by OMB to initiate proposals for change under Section 3504(b)(2) does not constitute a "disapproval" of the collection of information. Rather, it initiates a process whereby the agency commences a rulemaking or other appropriate action to consider a change in its information collection activity. The agency retains authority to determine the outcome of that process, subject to OMB review pursuant to Section 3504(h), or 3507 if notice and comment rulemaking is not involved.

The central issue, in OMB's view, is what the Act means by authorizing OMB to "initiate" proposals for regulatory change. Few comments addressed this question directly, though some commenters implicitly assumed that this means no more than that OMB can "suggest" changes to an agency and that the agency is under no obligation to begin or complete proceedings to change the collection of information at issue. OMB disagrees. OMB, like the public, already has authority, under other law, to "suggest" changes to federal agencies. This interpretation would render Section 3504(b)(2) superfluous. Moreover, this interpretation would effectively deprive the Act's clearance process for reporting and recordkeeping requirements in current rules of any force.

It should be kept in mind that a "rule," as that term is defined by the Administrative Procedure Act, 5 U.S.C. § 551, can take different forms and that many "rules" are not promulgated pursuant to notice and comment rulemaking and can be changed without notice and comment procedures. Once OMB has directed an agency to initiate a change in the collection of information, it is the agency that must decide how the change will be considered, taking into account the APA and its own statutory mandates. Changes that go through notice and comment procedures are reviewed pursuant to Section 3504(h); other changes are reviewed pursuant to Section 3507. In either case, however, the agency is under an obligation to complete the decisionmaking process initiated by OMB.

The Paperwork Reduction Act focuses on the collection of information -- not on rules, regulations, or forms. It is inaccurate to state, as do some commenters, that OMB asserts the power of "approval" over regulations. By confusing the disapproval of a *regulation* with the disapproval of a *collection of information*, these commenters mistakenly argue that OMB's substantive authority to initiate changes in collections of information does not extend to collections of information in current regulations. OMB, however, neither claims to have nor has any power under the Act to approve or disapprove any *regulation*. Its authority is limited to *collections of information*. Within this narrow orbit, however, OMB's authority is broad.

Section 3504(h) makes this point dramatically. It provides that OMB can disapprove a collection of information even if the regulation has been promulgated and has otherwise taken effect. Section 3504(h)(5)(B) grants OMB that authority any time an agency fails to submit a collection of information for review; OMB also has that authority if an agency's response to OMB's comments is unreasonable (Section 3504(h)(5)(c)) or if an agency materially modifies a collection of information without adequately notifying OMB (Section 3504(h)(5)(D)). Each of these provisions is designed to protect the integrity of the Paperwork Act review process.

This authority also necessarily encompasses agency violations of the Paperwork Act review process. In response to agency comments, OMB has revised the final rule to make it clear that the time periods for reviewing collections of information are flexible and will be changed to accommodate any reasonable agency request. However, agencies may not subvert the review process by unreasonably delaying a rulemaking proceeding just as they may not subvert the process by refusing to submit the collection of information for review in the first place. These principles, applied in Section 3504(h) to proposed rules, are applied in like fashion in § 1320.14 to existing ones.

One commenter has raised the question of the legal effect an OMB disapproval has on a pre-existing regulatory requirement. If an agency has proposed to revise a recordkeeping requirement in an existing rule, and the requirement in the proposal is disapproved by OMB, what is the effect of the disapproval? Does the pre-existing requirement stay in effect or has it been invalidated also? The answer depends on the circumstances of the disapproval. Again, it has to be remembered that OMB disapproves the collection of information requirement, not the proposed regulation itself. If the disapproval relates only to the incremental increase in the burden contained in the new proposal, then the pre-existing collection of information may remain intact. If, on the other hand, OMB's disapproval relates to the entire collection of information requirement, then the requirement in the pre-existing regulation is also invalidated.

In summary, the Act covers all federal reporting and recordkeeping requirements, however imposed. OMB will review requirements contained in current rules according to the statutory standards, and will initiate proposals for change when appropriate. Such proposals are subject to OMB review under §§ 1320.12 or 1320.13 of this rule as appropriate.

The procedures outlined in this rule for review of collections of information in existing regulations have been approved in their essentials by OLC as according with the June 22, 1982 memorandum, discussed above. The OLC's view on this issue is set out in a memorandum of September 24, 1982, which is a part of this rulemaking record and open to the public. The memorandum states:

OMB does have authority to review and initiate proposals for change in existing regulations under Section 3504(b)(2) and, in accordance with the standards and limitations established by Sections 3504(h) and 3518(e) to disapprove collection of information requirements and proposed replacements for existing regulations. This authority derives, in its essentials, from Sections 3504, 3506, 3516 and 3518 of the Act.

The OLC acknowledges OMB's authority to establish "workable procedures for the review of collection of information requirements in existing regulations" and has approved the "fundamental elements" of the OMB program, reflected in this final rule. Among the fundamental elements specifically approved by the OLC are:

-- The requirement that collection of information requirements in existing regulations be submitted for OMB review.

-- OMB authority to direct the agency to initiate a proposal for change if a collection of information requirements in an existing regulation submitted for review is unnecessary or unduly burdensome.

-- The agency's legal obligation to prepare and publish a notice for change in the rule in the Federal Register.

-- OMB's authority to disapprove the collection of information requirements as published. In OLC's words, "the agency may not engage in a collection of information that has been disapproved by OMB under those standards, and a disapproved collection of information requirements may not be enforced against the public."

-- OMB's authority to disapprove, or disapprove in part, a collection of information requirements contained in an existing regulation if the agency has "refused within a reasonable time to comply with an OMB directive to submit the requirement for review, to initiate a rulemaking to change the requirement, or to publish a final rule containing a new requirement."

-- OMB's authority to disapprove a collection of information requirements under these procedures, which "includes the authority to disapprove not only the 'new' proposed requirement, but also to disapprove \* \* \* any preexisting requirement directed at the same collection of information, and therefore constituting essentially the same requirement."

-- OMB's authority to require agencies to display control numbers on regulations containing approved collection of information requirements.

-- The legal status of control numbers -- the mere absence of a control number assigned to any collection of information requirements in an existing regulation does not, as a legal matter, invalidate any such requirement.

The OLC also noted that the substantive limitations on OMB's disapproval authority found in Section 3518(e) apply to actions regarding reporting and recordkeeping requirements in existing rules, as they do to all exercises of authority under the Act.

In addition, many comments have addressed specific aspects of this section, and modifications have been made in individual paragraphs.

New material has been added to paragraph (a):

Submissions shall provide sufficient information to permit consideration of the criteria set out in § 1320.4 (b) and (c), shall include an estimate of burden, calculated in a manner prescribed by OMB, shall identify any significant burdens placed on a substantial number of small businesses or other small entities, and shall contain such additional supporting material as the Director may request.

In the proposed rule, these submission requirements were stated separately in § 1320.12, 1320.13, and 1320.14. Since the same substantive standards apply to submissions under each of these sections, all of the submission requirements have been located in this section of the rule, which applies to all collections of information.

Several members of the public have suggested that the instructions to agencies concerning submissions, contained in OMB Standard Form (SF) 83, should be stated in the regulation. However, the requirements of SF-83 are subject to change from time to time, and OMB believes that this level of detail would be inappropriate for a regulation.

Paragraph (b) of the proposed rule has been moved to § 1320.4, where it appears as paragraph (c). Comments on that paragraph are discussed in that section.

A new paragraph (b) has been added to this section as suggested by several members of the public, to facilitate public participation in the Paperwork Reduction Act process. The new paragraph (b) reads:

Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

A new paragraph (c) has been added to make clear that the substantive standard applied by OMB to all agency submissions is that set forward in § 1320.4 (b) and (c).

A new paragraph (d) has been added to make clear that OMB will consider all public comments received in all decisions under the Paperwork Reduction Act -- approvals, disapprovals, modifications, decisions to review, decisions to initiate proposals for changes, or stays in the effectiveness of approval of any collections of information. This is a statutory requirement, and has been OMB's practice. Several members of the public have commented that it should be specified clearly in this section.

Several members of the public have suggested a fixed period for public comments on all submissions. This raises an important concern, shared by OMB. However, OMB has concluded that a fixed period for all submissions would not be practical in view of the large volume of paperwork submissions, most of which generate no comments from the public. OMB intends to carry out its paperwork reviews with full public participation, while minimizing delay and disruption in agencies' activities. To delay all submissions -- even if routine or specifically required by statute -- would greatly increase the cost and inconvenience of the Paperwork Reduction Act process, with no commensurate gain for the public. The period allowed for public comment, therefore, has been kept flexible. Factors that are considered include the nature and importance of the submission, any indication that public comments will be forthcoming, and the degree of latitude the agency and OMB have in modifying or eliminating the requirement.

Paragraph (e), which was lettered as paragraph (c) in the proposed rule, has been modified in several respects. First, the Department of the Treasury has suggested that collections of information contained in regulations issued without notice and public comment could be better handled under § 1320.14 than under § 1320.12. OMB agrees with this position, and has therefore specified that "collections of information contained in existing regulations that were published as final rules in the Federal Register" will be submitted in accordance with the procedures of § 1320.14. There are two reasons for this change. First, it is not possible to discern from the face of the Code of Federal Regulations whether a given rule was adopted after public notice and comment. The public frequently cannot tell without extensive research, nor can OMB. Requiring a distinction would consume agency and OMB resources that could be better employed in substantive review. Second, many rules now in effect were adopted without notice and comment procedures, but would require notice and comment if modified today, under current practice and interpretation of the Administrative Procedure Act. For the same reasons that the procedures of this section are required for reporting and recordkeeping requirements in current regulations adopted after public notice and comment, they are appropriate for such requirements in rules that would require public notice and comment for modification. This will also avoid disrupting the body of current rules.

An organization called Public Citizen has suggested that a special procedure be established for "emergency" rules containing collection of information requirements. Under the suggested procedure, collection of information requirements in emergency rules would be permitted to go into effect without OMB clearance, with OMB review to take place in the course of subsequent rulemaking. However, the Act envisions OMB review of proposed collections of information *before* they are imposed on the public. This is the procedure for information collection requests under Section 3507(g) of the Act. OMB has added a new paragraph (f) to § 1320.17 that should accommodate the concerns of this comment, without permitting unreviewed paperwork burdens to be imposed on the public.

A sentence has also been added referring to the emergency processing procedures of § 1320.17.

One agency has recommended that where an information collection request is an integral part of a regulation, dual approval not be required. OMB agrees. As discussed in connection with § 1320.7(d), any collection of information specifically contained in a regulation (such as a form printed as part of a regulation) is considered part of the collection of information requirement imposed by that regulation, and does not need an additional approval. Such a collection must display the control number assigned to the collection of information requirement in the regulation. On the other hand, a form is not considered to be "specifically contained in" a regulation merely because the regulation refers to or authorizes the form. A generally valid test is that the form requires independent clearance if the information collection component of the related regulation cannot be enforced without the form. For example, if a regulation states that respondents must supply certain data "on a form to be provided by the agency," the form must be cleared independently.

Several modifications have been made in paragraph (f), which was lettered as paragraph (d) of the proposed rule. First, several agencies objected to the potential disruptive effect of a unilateral OMB decision to review a previously approved collection of information. To minimize such disruption, OMB has modified the rule to require consultation with the agency prior to any decision to review or stay the effectiveness of its previous approval of a collection of information.

Several commenters have requested standards for deciding when a previous approval should be reviewed. Accordingly, OMB has added the following sentence to the rule:

Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of the initial submission were materially in error.

Another agency has requested clarification of whether OMB's authority to stay the effectiveness of a prior approval applies to collection of information requirements approved under Section 3504(h). It does not. To clarify this, the term



"information collection request" has been substituted for the term "collection of information" in the final sentence of this paragraph.

The Department of Commerce has suggested that it may be unnecessary for agencies to resubmit their approval materials to OMB upon a decision to re-review, since the original materials are already on file in OMB's docket room. However, since decisions to review will take place only when circumstances have changed or the burden estimates provided by the agency in the original submission were materially in error, new information will be required from the agency. The Department also suggested that OMB, rather than the agency, publish the notice of a stay of effectiveness of a prior approval in the Federal Register. This, however, would be inconvenient to the public. Members of the public normally pay close attention to those portions of the Federal Register directly relating to their own activities. Publication by the agencies is the best way for persons required to respond to information collection requests to keep abreast of their status.

The Department of Defense has suggested that submissions that become effective because of OMB inaction during the 60 (or 90) day period should not be subject to paragraph (f). OMB has not accepted this comment in full. However, since OMB will review previously approved collections of information only in specified circumstances, it will not be able to use the re-review procedure as a mechanism to circumvent the 60 (or 90) day limit on its review authority.

Several agencies have questioned OMB's authority to reconsider approvals of collections of information in advance of their expiration dates. This authority derives, in part, from OMB's authority to determine the duration of approval, up to a three-year maximum. The Act does not obligate OMB to set a fixed and unchanging expiration date. Rather, this rule and OMB practice expressly condition all expiration dates on OMB's right to reconsider at a later date. Such reconsiderations are not common, but have occurred in certain circumstances. This has been established practice under both the Paperwork Reduction Act and its predecessor, the Federal Reports Act. Nothing in the language or legislative history of the Paperwork Reduction Act indicates that Congress intended to cut back on OMB's well-established authority under the Federal Reports Act to reconsider approvals of collections of information in advance of the expiration date.

Paragraph (g), originally lettered as paragraph (e) in the proposed rule, has been modified, at the suggestion of the Department of Education, to refer to the Federal Education Data Acquisition Council (FEDAC), "or organizational unit fulfilling the same statutory function within the Department of Education." This is because the name or status of FEDAC within the Department of Education is subject to change.

Several agencies and members of the public have expressed dissatisfaction with paragraph (g) because of the delays and confusions entailed by FEDAC review, and by the February 15 approval date. However, the provisions of this paragraph are statutorily required.

The Business Advisory Council on Federal Reports has suggested that paragraph (h), originally lettered as paragraph (f) in the proposed rule, should be amended to prevent any modification in an information collection request or requirement, whether or not substantive or material, without submission to OMB for review and approval. On the other hand, four agencies have suggested that the term "substantive or material" be expanded or clarified to increase agency flexibility. OMB declines to make any of these changes. This paragraph is intended to permit agencies to make minor adjustments in the wording of collections of information without resubmission to OMB. However, if the substance of the collection of information is changed, or if the change is in any way material, it must still be submitted to OMB for clearance. For agencies to make substantive or material modifications without OMB clearance would enable them to avoid the strictures of the Act. Special administrative arrangements can be made to effectuate prompt decreases in paperwork requirements.

One agency has suggested that this paragraph apply only to information collection requests. However, material or substantive changes by agencies in collection of information requirements in regulations without review are no more justified than in information collection requests. This comment has therefore been rejected.

Paragraph (i), originally lettered as paragraph (g) in the proposed rule, has not been modified. One member of the public has suggested that the public, as well as the agency head or Senior Official, should be able to urge reconsideration of disapproval. In effect, this has been accomplished through § 1320.11(d), which obligates OMB to consider public comments whenever making a decision.

Several agencies have suggested that they should be permitted to request reconsideration of a disapproval of a collection of information even in the absence of new or additional information. However, agencies have ample opportunities to communicate their views to OMB during the clearance process. Formal requests for reconsideration should be based on new and additional information.

No public comments have raised concerns about paragraph (j), lettered as paragraph (h) of the proposed rule. One agency, however, has suggested changing the time mentioned in this paragraph from noon to 3:00 p.m. A submission received as late as 3:00 p.m., however, can receive little substantive review by OMB staff on the first day. The next business day will therefore be considered to be the first day during which OMB had the opportunity to engage in its clearance responsibilities.

*12. Section 1320.12 Clearance of Information Collection Requests.* The introduction to this section has been changed to clarify the types of collections of information to be covered by this section.

Paragraph (a) of the proposed rule has been deleted, because this material now appears in paragraph (a) of § 1320.11. The requirements of the paragraph still apply to the submission of information collection requests, because § 1320.11 applies to *all* collections of information. In connection with paragraph (a), which was originally lettered as paragraph (b) in the proposed rule, one member of the public has suggested a new cross-index format for the Federal Register. This suggestion should be made to the Federal Register.

Two agencies have suggested that the public should direct their comments to the agency as well as to OMB. Although OMB agrees that the agencies should be informed of public comments on their proposed information collection requests, the principal intent of this provision of the rule is to make it easier for the public to participate in the process. OMB believes that requiring the public to submit a second set of comments to the agency would discourage, not promote, public participation. OMB will make the substance of public comments known to the agency.

Another agency has requested authorization for weekly publication of information collection requests submitted to OMB. This requires no change in the rule. Agencies are free to publish their notices on a weekly basis. However, notice of any given submission must be forwarded to the Federal Register before submission to OMB, in order to comply with Section 3507(a)(2)(B) of the Act.

Paragraph (b) was originally lettered as paragraph (c) in the proposed rule. The Equal Employment Advisory Council has recommended that OMB's 60-day review period begin on the date notice of the submission is published in the Federal Register, rather than the date OMB receives the submission. This recommendation cannot be adopted, because it would conflict with the statutory requirement. See *44 U.S.C. 3507(b)*. Another commenter has suggested that OMB not be required to make its decision by any predetermined date, and that the date be extended if needed for the receipt of public comments. This comment has also been rejected because of inconsistency with the statute.

The Business Advisory Council on Federal Reports has recommended that the term "modify" be added to this paragraph in addition to the terms "approve" and "disapprove." Apparently this is because, as a practical matter, OMB frequently approves a submission in part, effectively conditioning its approval upon modifications. OMB has accepted this comment. As discussed under § 1320.7(n), the term "modify" as used in this rule means "to approve in part and disapprove in part." Use of the term does not expand OMB's authority of approval or disapproval, but is used as a matter of convenience.

The Department of the Interior has requested that OMB clarify how it will make its final decisions under this paragraph publicly available. This is addressed in § 1320.18.

Several comments have been received on paragraph (c), originally lettered as paragraph (d) in the Notice of Proposed Rulemaking. Conoco, Inc. noted that a one year approval can be cumbersome and expensive, and recommended that OMB avoid "default" under the terms of this paragraph whenever possible. OMB strongly shares this view.

Two agencies have commented that they should not be required to request a control number when OMB fails to act within the specified time limits. However, the principal, if not the only, reason why OMB might fail to act within the time limits would be if OMB's computerized tracking system for submissions somehow lost track of a given submission. In such an instance, the agency's request is necessary to bring the submission to OMB's attention.

Another agency has suggested that the period for approval under this paragraph be changed from "not more than one year" to "not less than one year." However, Section 3507(b) of the Paperwork Reduction Act provides that the approval period upon OMB failure to act shall be "for not more than one year." This comment has therefore been rejected.

Paragraph (e) of the Notice of Proposed Rulemaking has been deleted from this section, because it is now included as § 1320.11(d).

OMB has received no public comments on paragraph (d), which was originally lettered as paragraph (f) in the Notice of Proposed Rulemaking. One agency requested guidance on when to display the expiration date. This portion of

the paragraph has been changed to read "and, unless OMB determines it to be inappropriate, an expiration date." This is consistent with the change made in § 1320.7(f)(1), (3) and § 1320.4(a). Section 1320.4(a) has also been changed to make it consistent with this paragraph, concerning the necessity for displaying a control number on voluntary information collection requests.

*13. Section 1320.13 Clearance of Collection of Information Requirements in Proposed Rules.* Throughout this rule, the term "collection of information requirement" has been substituted for the term used in the Notice of Proposed Rulemaking: "information collection requirement." This is to be consistent with the language used in Section 3504(h) of the Act.

The Veterans Administration has commented that the requirement in paragraph (a) that comments on collection of information requirements in proposed rules be directed both to the agency and to OMB is unnecessary, would result in an increased burden on the public, and might inhibit full public participation in the process. This comment has been adopted, and comments are now directed only to OMB. Of course, collection of information requirements are also subject to public comment on the regulation as a whole, and these comments will go to the agency. Moreover, OMB will make available to the agency all significant public comments on the information collection aspects of the proposed rule.

It should be noted that paragraph (a) does not require a separate notice in the Federal Register concerning the information collection requirements of a proposed rule. It is sufficient for the agency to identify such requirements in the preamble to the proposed rule, to state that the rule has been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act, and to direct comments on the collection of information requirements to OMB.

The Small Business Administration has suggested that estimated burden hours be published in the Notice of Proposed Rulemaking to facilitate public comment. OMB agrees that in many instances this information would be helpful to the public. However, burden per respondent is currently estimated on an average basis, with relatively wide variance among categories of respondent. Narrower estimates of burden per respondent might themselves require additional collection of information from the public. At this time, therefore, OMB deems it inadvisable to require agencies as a general matter to publish burden estimates in their Notices of Proposed Rulemaking. However, OMB is exploring workable ways for providing better information on burden to the public, and has required in § 1320.11(b) that all such information be made available by the agency upon request.

Material redundant of that required under § 1320.11(a) has been deleted from paragraph (b) of this section.

At the suggestion of the Business Roundtable, paragraph (c) has been modified to make clear that the OMB Notice of Action, which constitutes OMB's public comments on a proposed collection of information requirement under Section 3504(h)(2) of the Act, shall be made a part of the agency's rulemaking record.

The Agricultural Marketing Service of the Department of Agriculture has commented that the time constraints of this paragraph are not compatible with marketing orders, and has objected to the requirement that published rules incorporate OMB comments "for the reasons that it is costly, and that the final rule reflects other agencies' comments." However, these requirements are statutory in nature, and cannot be changed by this rule.

Several agencies have suggested that OMB submit its comments directly to the address indicated in the Federal Register document, rather than as an OMB Notice of Action to the Senior Official. However, the Paperwork Reduction Act vests primary authority in the Senior Official to oversee the paperwork reduction process at each agency, and it is important for that official to be the point of communication between OMB and the agency.

A new paragraph (d) has been added to address agency failure to comply with the requirements of Section 3504(h), as implemented by this section. The paragraph states:

If an agency submission is not in compliance with paragraph (b) above, OMB may disapprove the collection of information requirement in the proposed rule within 60 days of receipt of the submission. If an agency fails to submit a collection of information requirement subject to this section, OMB may disapprove it at any time.

The authority for this paragraph is found in Section 3504(h)(5)(B). This paragraph preserves a degree of flexibility for situations in which an agency submission to OMB does not strictly comply with the procedures, but the delay involved is minor and OMB is able to proceed with clearance of the submission under the procedures of this section.

Paragraph (e), which was originally lettered as paragraph (d) in the Notice of Proposed Rulemaking, has been modified to require agencies to explain how a final rule "responds" to "any comments received from OMB or the pub-

lic." These changes conform to the statutory requirements of Section 3504(h)(3), and are in response to a comment filed by the Council on Government Relations and to a comment by the Department of the Treasury.

Paragraph (f) has been relocated for greater clarity, at the suggestion of the Department of Commerce. It formerly was located as paragraph (i) of this section. Two agencies have specifically noted their approval of this paragraph, and have suggested that these procedures be used as often as possible.

The time periods set forth in paragraph (g), which was originally lettered as paragraph (e) in the proposed rule, have been clarified, at the request of several agencies. The new language makes clear that agencies must submit the final rule to OMB on or before the date of publication in the Federal Register. It also makes clear that OMB must act no later than 60 days after publication of the final rule, and that no resubmission need be made of a final rule already approved by OMB and assigned a control number, unless significant modifications had been made by the agency.

For reasons already discussed, the term "modify" has been added to this paragraph, at the suggestion of the Business Advisory Council on Federal Reports.

The words "and no others" have been deleted from the proposed rule to conform more closely to statutory requirements. As the University of California Statewide Administration, the Council of Industrial Boiler Owners, and the General Motors Corporation have observed, OMB authority to determine whether the collection of information by an agency is necessary for the proper performance of its functions, as set forth in Section 3508 of the Act and incorporated by reference in Section 3504(h)(2), is broader than the reasons for disapproval specified in this paragraph. Section 3508 states: "To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary, for any reason, the agency may not engage in the collection of the information." The specific grounds for disapproval listed in this paragraph are based on Section 3504(h)(5). Congress did not intend these reasons to constrict OMB discretion under the standards of Section 3508. As stated in the legislative history:

[I]n reviewing proposed regulations, OMB may disapprove any collection requirement which it finds "unreasonable" -- which is to say, not of sound judgment in the opinion of the OMB director. The purpose of 3504(h)(5)(C) is not to restrict unduly the ability of OMB to act, but to insure that in acting, OMB have justification for what it does. 126 Cong. Rec. H11380 (Daily ed., Dec. 1, 1980) (Statement of Rep. Horton).

The Council of Industrial Boiler Owners and General Motors Corporation have further suggested that the term "unreasonable" in subparagraph (3) be defined to include, *inter alia*, failure to demonstrate that (1) the information collection request is essential to the proper performance of the agency's functions, or (2) meets the criteria of § 1320.4 of the proposed rule. While OMB agrees that these are appropriate situations for disapproval under subparagraph (3), no separate definition has been included in this rule because Congress intended determinations of "unreasonableness" to be made under the same statutory standards applicable to other OMB determinations under the Act. 120 Cong. Rec. S16700 (Daily ed., Dec. 15, 1980) (Statement of Sen. Kennedy). Nonetheless, agencies should be on notice that the situations referred to in this comment are among those that would lead to a judgment that the agency's decision was "unreasonable."

The Departments of Labor and the Treasury have suggested deletion of the term "approval" from this paragraph, on the theory that Section 3504(h) of the Act does not provide for OMB approval -- but only disapproval -- of collection of information requirements in proposed rules. However, as pointed out in the supplementary information to the proposed rule, Section 3504(h)(9) explicitly refers to OMB's decision to "approve" a collection of information requirement contained in an agency rule. Moreover, Section 3504(h) explicitly refers to the standards of Section 3508, which are the standards for *approval* of collections of information. There is therefore no basis for adopting this comment.

Several minor changes have been made in the wording of paragraph (h), which was originally lettered as paragraph (f) in the proposed rule. The word "modify" has been added for reasons already discussed. No substantive changes have been made.

Several agencies and members of the public have requested that the manner in which OMB will make the reasons for its decisions publicly available be changed or clarified. These reasons are supplied to the agency, and are freely available to members of the public upon request. Moreover, when OMB disapproval is made pursuant to paragraph 1320.13(g)(3), OMB comments will already have been made public in the course of the agency's rulemaking, and the agency's response to the comments will have been published in the Federal Register. Additional publication would be essentially duplicative.

No substantive changes have been made in paragraph (i), which was originally lettered as paragraph (g) in the proposed rule. The Nuclear Regulatory Commission has suggested that OMB provide guidance on the "special circumstances" which might lead OMB to approve a collection of information requirement under this paragraph for less than three years. Any such decision will be based upon the statutory standards under the Paperwork Reduction Act, as set forth in § 1320.4(b) and (c) of this rule.

The Federal Communications Commission has expressed the view that the three-year approval limitation would adversely affect administration processes. However, three years is the period selected by Congress in the Paperwork Reduction Act for review of information collection requests. Since Congress defined the term "information collection request" to include all "reporting and recordkeeping requirements," it seems most consistent with legislative intent to apply the three-year period across the board to all reporting and recordkeeping requirements, whether or not they are contained in "information collection requests" as that term is used in this rule. As a practical matter, the government's use of information changes over time, and there is a continuing need for review to ensure that the public is not being burdened by paperwork requirements that are no longer truly necessary. The policy considerations that led Congress to impose a three-year limit on approvals of information collection requests apply equally to all collections of information.

No substantive change has been made in paragraph (j), which was originally lettered as paragraph (h) in the proposed rule. Several agencies have objected to the requirement that agencies display a control number before the collection of information shall become effective. This issue was discussed in Section 4.

Several agencies and members of the public have inquired about the status of collection of information requirements contained in rules after the rules have become effective but before the conclusion of OMB's 60-day period for approval or disapproval. The requirements do not become effective until (1) OMB approves or fails to act, and (2) a control number is assigned and displayed. If the agency considers it necessary to implement a requirement prior to this period, it may request expedited action under § 1320.17(f). Nothing in the Paperwork Reduction Act or this regulation should be interpreted to delay the effectiveness of, or otherwise affect, portions of regulations other than collection of information requirements.

*14. Section 1320.14 Collections of Information in Current Rules.* This section was the subject of intensive debate among the commenters. Generally speaking, most public comments supported these procedures for periodic review of collections of information in current rules, while many agency comments opposed them. As discussed in Sections 4 and 11 of this preamble, OMB believes that procedures such as these are essential in order to fulfill statutory responsibilities and conduct an effective and comprehensive paperwork control program.

This section's scope has been modified to respond to several agency comments. It now applies to reporting and recordkeeping requirements in existing rules that were published as final regulations in the Federal Register. In the proposed rule, this section applied to all reporting and recordkeeping requirements in existing rules that were adopted after public notice and comment. The reasons for this change were discussed under § 1320.11(e). To be consistent with this change of scope, the term "collection of information requirement" has been changed throughout this section to the term "collection of information." Some of the reporting and recordkeeping requirements covered by this section -- those not adopted after public notice and comment procedures -- are information collection requests and not collection of information requirements. This section applies to both.

The term "current" rules has been used in these regulations in lieu of the term "existing" rules to make clear that this section applies, and will continue to apply, to all rules in force. No distinction is made in these regulations between rules "existing" prior to the effective date of the Act and those promulgated thereafter. Once a rule becomes effective, it is considered a "current rule" for purposes of these regulations. (It should be noted that the terms "rule" and "regulation" are used interchangeably.)

Paragraph (a) has been modified to require submission of collections of information subject to this section to OMB for review prior to December 31, 1983, in accordance with an orderly schedule to be developed by the agency with OMB concurrence. Several agencies have suggested other periods for submitting these collections, but OMB believes that these provisions strike an appropriate balance between the need for expeditious review of outstanding collections of information in current regulations and the practicalities of the review process.

Two agencies have suggested that previously approved collections of information be submitted for review under this section only 30 or 60 days prior to the expiration date. However, a full 90-day period will permit OMB to conduct the same substantive review that it does of information collection requests. Sixty days, plus a possible 30-day extension,

is the period Congress designated for OMB clearance of other collections of information currently in force; in practice, this period has worked out well.

Paragraph (b) has been deleted, since the material is now located in § 1320.11(a).

Paragraph (b), which was originally denominated as paragraph (c) in the proposed rule, has not been substantively changed. OMB has rejected an agency suggestion that the public address comments both to OMB and to the agency, because of the duplicative burden this would place on the public. This issue was also addressed in the context of § 1320.13(a). OMB has also rejected an agency suggestion that OMB, rather than the agency, publish the Federal Register notice, for reasons discussed in the context of § 1320.11(f).

The Department of Commerce has pointed out that paragraph (c), which was originally lettered as paragraph (d) in the proposed rule, was inconsistent with § 1320.13(i)'s provision on approval for a full three-year period. In response, OMB has added the following sentence to paragraph (d): "Approval of any collection of information submitted under this section will be for the full three-year period, unless the Director determines that there are special circumstances requiring approval for a shorter period." This makes the sections consistent.

The General Services Administration has suggested that the rule clarify the agencies' obligation to codify the OMB control number. This has been done in the definition of "display." A specific cross reference to the display requirement has been included as a final sentence in paragraph (e).

Paragraph (f) of the proposed rule has been deleted because the material is now located in § 1320.11(d).

The following sentence has been added to paragraph (f), which was originally denominated as paragraph (g) in the proposed rule: "In the case of a collection of information not previously approved, a control number shall be granted for such period." This will accommodate review of reporting and recordkeeping requirements in current regulations that have not previously been approved by OMB or GAO and do not now display control numbers. After March 1, 1984, this sentence will rarely, if ever, be relevant. A conforming change has been made in the last sentence of the paragraph.

Two additional minor changes have been made in paragraph (f). First, the duration of the period required for consideration of proposed changes has been changed to refer to OMB approval or disapproval "under § 1320.12(b) or § 1320.13(g) as appropriate." This conforms to a change in paragraph (g) (discussed there). Second, the final sentence of this paragraph has been changed to clarify that an agency can publish its Federal Register notice on the agency's next practicable publication date. The agency need not go into the Federal Register on a day other than its ordinary day.

Paragraph (g), which was originally denominated as paragraph (h) in the proposed rule, has been significantly changed. There are two major aspects to the change. First, the paragraph has been redesigned to accommodate revisions in collections of information not subject to public notice and comment procedures. If modification of the collection of information requires notice and comment, the agency shall publish a Federal Register notice proposing the change. That notice, with submission to OMB, initiates the procedures under § 1320.13 of the rule and Section 3504(h) of the Act. On the other hand, if the collection of information is contained in a regulation that need not undergo public notice and comment, the agency shall undertake such procedures as are necessary to make the change. This will initiate the clearance procedures under § 1320.12 of the rule and Section 3507 of the Act. Whether to proceed under notice and comment procedures is left to the discretion of the agency, under applicable law. This rule merely establishes procedures for OMB review, whichever procedural course the agency follows.

Second, a sentence has been added to the end of this paragraph to make clear that all procedures must be completed within a reasonable period of time, which will be determined by OMB in consultation with the agency. This will ensure that the Act is not frustrated by mere delay, but will also ensure that the agency is consulted regarding a reasonable schedule.

In addition, OMB has accepted a comment by the Environmental Protection Agency that the public notice published under this paragraph need only identify "the proposed changes in the collections of information," not the entire collections.

A new paragraph (h) has been added to ensure that delays not frustrate the requirements of this section. The provisions of this paragraph were specifically approved by the OLC's memorandum of September 24, 1982. It is anticipated that these provisions will rarely need to be employed.

A new paragraph (i) has been added to clarify the consequence of OMB disapproval of collections of information covered by this section, after the agency has published a proposed revision. This paragraph makes clear that any such

disapproval shall constitute disapproval of the collection of information request or requirement contained in the Notice of Proposed Rulemaking or other submission and also of the pre-existing request or requirement directed at the same collection of information and therefore constituting essentially the same request or requirement. This consequence follows from the nature of OMB authority, which extends to collection of information requirements contained in regulations, not to the regulations themselves. When a collection of information requirement is submitted for OMB review, OMB will approve or disapprove the requirement, in whole or in part. To the extent disapproved by OMB, the requirement may not be enforced by the agency. This is true without regard to whether the requirement appears in an existing regulation, or in any other agency issuance. This interpretation was specifically approved by the OLC in its memorandum of September 24, 1982.

*15. Section 1320.15 Collections of Information Prescribed by Another Agency.* One commenter has suggested that OMB and GSA reviews of standard or optional forms should be subject to public comment. Standard and optional use forms used for obtaining information from the public or collecting general purpose statistics from Federal agencies are, as indicated in § 1320.15(a)(1), subject to review and approval by both GSA and OMB. As stated in paragraph (c) of this section, the same requirements for submission and clearance that apply under other sections -- including public notification requirements -- apply to submissions under this section. The rule thus already requires agencies proposing standard and optional use forms to publish a Federal Register notice indicating that such forms have been submitted to GSA and OMB for review, and inviting the public to request copies of the submission and provide comments to GSA. OMB believes that this approach will minimize the administrative paperwork that would otherwise be imposed. It establishes a single clearance procedure for standard and optional use forms while providing a mechanism to allocate the burden among the appropriate agencies.

GSA, with the assistance of the agencies, will report annually to OMB on each agency's use of each standard and optional use form. The burden of such use will be counted as burden imposed by each user agency. Several agencies have suggested that such assignment is inappropriate because they are following a standard required protocol. OMB rejects this view. In OMB's experience, agencies typically have considerable discretion to require or not to require the use of standard or optional forms. Moreover, assigning burden on this basis is comparable to the process of assigning burden to an agency conducting a collection of information requirement that precisely follows the explicit requirements of a statute.

In considering whether to grant or extend approval of standard and optional use forms, GSA and OMB will consider the experience of the agencies and the public as indicated by any comments they choose to submit.

A process similar to that for standard and optional use forms will be followed for all other collections of information prescribed by an agency but collected by other agencies. However, in such situations the promulgating agency will directly submit the collection of information to OMB for review and approval. With the assistance of the agencies collecting the information, the promulgating agency will provide OMB an estimate of burden imposed by each "user" agency and such burden will be allocated to the "user" agencies.

*16. Section 1320.16 Interagency Reporting.* No changes have been made in this section. The Department of the Treasury has requested that OMB state that this section applies only to information collection requests. However, this section applies to "interagency reporting," *i.e.*, reporting of information among federal agencies. Except in the case of general purpose statistics, such reporting does not constitute an "information collection request" because it is not imposed upon the public. Nor does it constitute a collection of information requirement.

*17. Section 1320.17 Emergency and Expedited Processing.* Public comments on this section have generally expressed concern about the possibility that paperwork requirements might be approved too hastily. Several commenters have proposed methods for requiring agencies to document the nature of the emergency situation. These comments have not been accepted, because Section 3507(g) of the Act requires OMB to act on an emergency request promptly upon appropriate certification by the agency head. It does not invest OMB with the authority to look behind such certification. However, OMB will exercise care in clearing emergency submissions so that the lack of time will not needlessly interfere with OMB's ability to evaluate independently the practical utility of the proposed collection of information. Merely because emergency processing is used does not mean the submission will necessarily be approved. OMB substantive authority -- and responsibility -- to approve or disapprove is unaffected.

The introductory paragraph to this section has been changed to refer to "submissions of information collection requests" instead of "proposed collections of information." This is because Section 3507(g) of the Act directly refers to "the review of information collection requests established pursuant to subsection (b)," indicating that emergency processing is limited to information collection requests. Moreover, it is apparent that applying this section's maximum 90-

day approval period to collections of information contained in regulations would generate practical problems. Paragraph (f) of this section, however, applies to all collections of information. It is discussed below.

One change has been made in paragraph (a). At the suggestion of the Department of the Treasury, judicial deadlines have been explicitly included as a ground for emergency processing.

The Department of Housing and Urban Development objects to the inclusion of paragraph (c), stating that it could delay implementation of important information collection requests and could be detrimental to agency actions. However, paragraph (c) requires only that the agency take "all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information." If such consultation would truly disrupt agency operation, paragraph (c) would not require it. OMB has therefore rejected this comment. In most instances, OMB believes that such steps are both practicable and important to achieving the goals of the Paperwork Reduction Act. Public comments bear this out. For example, Conoco, Inc.'s comment specifically refers to paragraph (c) and states that it is "particularly concerned that this subsection be continuously enforced." Moreover, the Senate Report states that, in the case of emergency submissions, "The sponsoring agency will take all practicable steps to consult with interested agencies and members of the public to minimize the burden of the collected information." S. Rep. No. 96-930, at 27.

Several agencies have objected to paragraph (d), stating that the proviso that the time period requested by the agency must conform to the purposes of the Act is inconsistent with Section 3507(g). OMB recognizes that prompt action is required under the Act. In fact, in every instance to date involving a request for emergency processing, OMB has cleared the agency submission within the time requested by the agency head. At the extreme, however, OMB could not perform its statutory responsibilities if the period requested were so short that OMB could not apply the statutory standards. This has not happened, but the proviso in paragraph (d) is intended to protect against such an eventuality. Certainly, a request for processing within one day or more should ordinarily present no difficulty.

Several agencies have argued that the 90-day approval period under this section is too short. Whatever the policy merits of these comments, OMB cannot accommodate them because Section 3507(g) of the Act explicitly restricts approval under the emergency processing procedures to "a maximum of 90 days after the date on which the Director receives the request to authorize such collection."

The Department of Labor has suggested that "OMB approval be presumed for any information collection requirements contained in an emergency temporary standard." If this comment means that OMB approval should be "presumed" for submissions under this section, it cannot be accepted. OMB has a responsibility to "approve or disapprove" submissions under this section, applying the usual statutory standards. Nor can the comment be accepted if it means that OMB approval should be "presumed" for emergency regulations containing collections of information. Again, the Act mandates OMB review prior to imposition of paperwork burdens. However, OMB recognizes the need for expedition in emergency situations, and agrees with the Department that deference to the judgment of the agency in such situations can be "particularly critical." The entire purpose of this section is to accommodate the special needs of agencies in times of emergency.

NASA has suggested that paragraph (e) be revised to make the 90-day maximum approval period begin upon OMB approval, rather than upon OMB's receipt of the agency submission. However, this aspect of the paragraph is set by statute.

A new paragraph (f) has been added to this section to increase the flexibility of OMB and the agencies to process paperwork submissions on an expedited schedule. It should be particularly useful for emergency regulations and like issuances. The provision of expedited treatment for collections of information, where statutory "fast track" clearance has not been granted, is suggested by the Senate committee report. S. Rep. No. 96-930, at 49.

18. *Section 1320.18 Public Access.* OMB has received several comments concerning the indexing and format of the Federal Register. It is unable to respond to these comments, which should be directed to the Federal Register.

Three changes have been made in paragraph (a) in response to public comments or suggestions. First, the following has been added to the list of reasons for waiver of the publication requirements of the rule: where such publication would "jeopardize the confidentiality of proprietary, trade secret, or other confidential information." This addition is needed to ensure that the paperwork clearance process itself does not add to the burden of collections of information by jeopardizing their confidentiality. Second, a final sentence has been added to this paragraph: "Provisions of this paragraph guaranteeing public availability of comments on agency collections of information will not be waived or modified." This is to make clear that the public will always be afforded a reasonable opportunity to inspect comments re-



ceived concerning collections of information. Third, the specific cross-references included in the proposed rule have been deleted because the principle applies equally to all requirements of the rule for public notification. The specific cross-references have been replaced by: "Notwithstanding other provisions of this rule, requirements to publish public notice or to provide materials to the public may be modified \* \* \*."

Conoco, Inc. has proposed that the entire OMB clearance docket be published in the Federal Register at least monthly. This comment has not been accepted. OMB clearance dockets are voluminous, and their publication would be exceedingly costly and of little value to the public. Access to the full OMB docket is freely available to the public upon request.

Several members of the public have suggested deletion of the last sentence of paragraph (b), as published in the proposed rule. This sentence read, "Failure of an agency to comply with the requirements of this paragraph shall not be grounds for any person to fail to comply with a collection of information." These comments have been accepted, and the sentence has been deleted. This should not be interpreted as altering the legal status of collections of information that do not comply with paragraph (b). Such failures are not specifically included within the public protection provision of the Act, *44 U.S.C. 3512*; however, they are legally binding on the agencies and may in some instances be enforceable by the public.

Several agencies and members of the public have requested clarification of the term "reasonable steps" in paragraph (b). Ordinarily, reasonable steps will entail use of the same medium that is used to communicate the collection of information itself to the public. A written form should include the information on the form or an easily accessible attachment.

The Department of the Treasury points out that the requirement of paragraph (b), which implements the requirements of the Section 3504(c)(3)(C) of the Act, applies only to information collection requests. A modification has been made to make this clear.

19. *Section 1320.19 Independent Regulatory Agency Override Authority.* The word "promptly" has been added to this section to make clear that, following exercise of an independent regulatory agency override, OMB shall assign the control number without further delay. See *44 U.S.C. 3507(c)*.

The final sentence of this section has been reworded to clarify that the collection of information by virtue of an independent agency override becomes effective only upon assignment and display of an OMB control number. The mere override vote, without assignment and display of a control number, is not sufficient. Otherwise, the public would have no way to know whether the collection of information had been properly cleared.

The Business Advisory Council on Federal Reports has proposed that this section require that the override vote take place "in a public proceeding." Generally speaking, under other applicable law and practice, actions of independent regulatory agencies must take place in public proceedings. The Paperwork Reduction Act itself merely requires that the agency exercise its override authority "by a majority vote of its members." Further elaboration would be unnecessary and might conflict with lawful agency practices under other statutes. This comment has therefore been rejected.

20. *Section 1320.20 Other Authority.* In response to a suggestion by the Business Advisory Council on Federal Reports, paragraph (b) has been revised to read, in relevant part: "the Director may initiate a rulemaking proceeding to determine whether an agency's collection of information is consistent with statutory standards." This makes clear that exercise of authority under this paragraph is limited to actions to enforce or implement the Paperwork Reduction Act. The Environmental Protection Agency has stated that it assumes that "statutory standards" in this paragraph refers to an agency's substantive statutory authority and not to the Paperwork Reduction Act. This is incorrect. Of course, the agency's substantive authority is highly relevant to determining the practical utility of a collection of information under the standards of the Paperwork Reduction Act. However, OMB's authority is to implement the Paperwork Reduction Act, not agency substantive law.

The Securities and Exchange Commission has requested deletion of paragraph (b), in the belief that it exceeds statutory authority. However, Section 3516 of the Act grants the Director of OMB the authority to "promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter."

A new paragraph (e) has been added to this section. It clarifies two points. First, it states that nothing in these rules shall be interpreted as limiting the authority of OMB under the Paperwork Reduction Act or other law. As noted above, OMB has other authorities under the Paperwork Reduction Act that have not been implemented by this rule. Moreover,

as this paragraph makes clear, this rule is not intended to be an exhaustive statement of all aspects of OMB implementation of its paperwork clearance authorities.

Second, this paragraph states that nothing in the rule or the Paperwork Reduction Act will be interpreted as increasing or decreasing the authority of OMB with respect to the substantive policies and programs of the agencies. This language is taken from Section 3518(e) of the Act. It is applicable to all exercises of authority under this rule or the Act.

#### Regulatory Impact and Regulatory Flexibility Act Analysis

OMB has analyzed the effects of this rule under both Executive Order 12291 and the Regulatory Flexibility Act. Copies of the analysis are available upon request. In summary, OMB has concluded that this rule will have a salutary impact on small entities through the reduction of unnecessary paperwork and that, while the costs and benefits of a procedural rule such as this one are largely unquantifiable, the rule meets all the requirements of the Executive Order.

Issued in Washington, D.C., March 25, 1983.

Christopher C. DeMuth,  
Administrator, Office of Information and Regulatory Affairs.

#### List of Subjects in 5 CFR Part 1320

Reporting and recordkeeping requirements, paperwork, collections of information.

For the reasons set forth in the preamble, OMB amends 5 CFR Chapter III by adding a new Part 1320 to read as follows:

#### PART 1320 -- CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

Sec.

1320.1 Purpose.

1320.2 Effect.

1320.3 Coverage.

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1320.7 Definitions.

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1320.11 Agency submissions of collections of information.

1320.12 Clearance of information collection requests.

1320.13 Clearance of collection of information requirements in proposed rules.

1320.14 Clearance of collections of information in current rules.

1320.15 Collections of information prescribed by another agency.

1320.16 Interagency reporting.

1320.17 Emergency and expedited processing.

1320.18 Public access.

1320.19 Independent regulatory agency override authority.

1320.20 Other authority.

Authority: *31 U.S.C. Sec. 18a* and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

§ 1320.1 Purpose.

The purpose of this Part is to implement the provisions of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35) (the Act) concerning collections of information. It is issued under the authority of Section 3516 of the Act, which provides that "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter." It is designed to minimize and control burdens associated with the collection of information by Federal agencies from individuals, businesses and other private institutions, and State and local governments. In the case of inter-agency reporting, this Part establishes policy and promulgates regulations to ensure the effective management of inter-agency reporting requirements in the executive branch, and is promulgated under the authority of the Federal Records Act (Title 44 U.S.C. Chapters 21, 25, 27, 29, 31) and Section 104 of the Budget and Accounting Procedures Act of 1950, (Title *31 U.S.C Section 1111*, as well as the Act.

§ 1320.2 Effect.

This Part supersedes and rescinds Circular No. A-40, Revised, dated May 3, 1973, and Transmittal Memorandum No. 1, dated February 10, 1976. This Part will become effective on May 2, 1983.

§ 1320.3 Coverage.

The requirements of this Part apply to all agencies as defined in § 1320.7(a) and to all collections of information conducted or sponsored by those agencies, as defined in § 1320.7(c), wherever conducted or sponsored, except for collections of information:

(a) By compulsory process pursuant to the Anti-trust Civil Process Act or Section 13 of the Federal Trade Commission Improvements Act or Section 13 of the Federal Trade Commission Improvements Act of 1980;

(b) During the conduct of intelligence activities, as defined in Section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, including Executive Order 12333, issued December 4, 1981, or during the conduct of cryptologic activities that are communications securities activities; or

(c) During the conduct of a federal criminal investigation or prosecution, during the disposition of a particular criminal matter, during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action or investigation involving an agency against specific individuals or entities. This exception applies during the entire course of the investigation or action, whether before or after formal

charges or complaints are filed or formal administrative action is initiated, but only after a case file or its equivalent is opened with respect to a particular party. General collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry, do not fall within this exception.

§ 1320.4 General requirements.

(a) An agency shall not engage in a collection of information without obtaining Office of Management and Budget (OMB) approval of the collection of information and displaying a currently valid OMB control number and, unless OMB determines it to be inappropriate, an expiration date. An agency shall not continue to engage in such collection of information after the expiration date of the control number, unless OMB has approved an extension. Each agency shall ensure that collections of information required by law or necessary to obtain a benefit, and which are submitted to nine or fewer persons, inform potential respondents that the collection of information is not subject to OMB review under the Act.

(b) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that:

(1) The collection of information is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(2) The collection of information is not duplicative of information otherwise accessible to the agency; and

(3) The collection of information has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public. It shall also comply with the general information collection guidelines set out in § 1320.6, where applicable.

(c) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria listed in § 1320.4(b), and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any information collection request specifically required by an agency rule approved or not acted upon by OMB pursuant to §§ 1320.13 or 1320.14, but will independently assess any such information collection request to the extent that it deviates from the specifications of the rule.

(d) Except as provided in § 1320.19, to the extent that OMB determines that all or any portion of a collection of information by an agency is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof.

§ 1320.5 Public Protection.

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any information collection request if the request does not display a currently valid OMB control number, or, in the case of an information collection request which is submitted to nine or fewer persons, the request fails to state that for this reason it is not subject to OMB review under the Act.

(b) Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any collection of information requirement if the requirement has been disapproved by OMB, unless that disapproval has been overridden by an independent regulatory agency pursuant to § 1320.19. After March 1, 1984, all collection of information requirements that have been submitted to OMB for clearance, and that have not been disapproved by OMB, will display a currently valid OMB control number. The absence of a control number on a collection of information requirement does not, as a legal matter, invalidate such requirement; however, its absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information requirement has been disapproved.

(c) Whenever an agency has imposed an information collection request or collection of information requirement as the means for proving or satisfying a condition to the receipt of a benefit or the avoidance of a penalty, and the information collection request does not display a currently valid OMB control number or statement, as prescribed in §

1320.4(a), or the collection of information requirement has been disapproved by OMB in accordance with the procedures established by this Part (and not overridden by an independent regulatory agency pursuant to § 1320.19), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If such a collection of information is disapproved in whole by OMB (and the disapproval is not overridden pursuant to § 1320.19), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If such a collection of information is ordered modified by OMB (and the order is not overridden pursuant to § 1320.19), the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so modified.

(d) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through judicial or administrative process.

#### § 1320.6 GENERAL INFORMATION COLLECTION GUIDELINES.

Unless the agency is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information:

- (a) Requiring respondents to report information to the agency more often than quarterly;
- (b) Requiring respondents to prepare a written response to an information collection request or requirement in fewer than 30 days after receipt of it;
- (c) Requiring respondents to submit more than an original and two copies of any document;
- (d) Requiring grantees to submit or maintain information other than that required under OMB Circular A-102 or A-110;
- (e) Providing for remuneration of respondents, other than contractors or grantees;
- (f) Requiring respondents to retain records, other than health, medical, or tax records, for more than three years;
- (g) In connection with a statistical survey that is not designed to produce results that can be generalized to the universe of study;
- (h) Unless the agency has taken all practicable steps to develop separate and simplified requirements for small businesses and other small entities;
- (i) Requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect its confidentiality to the extent permitted by law;
- (j) Requiring respondents to maintain or provide information in a format other than that in which the information is customarily maintained.

#### § 1320.7 DEFINITIONS.

For purposes of implementing the Paperwork Reduction Act and this Part, the following terms are defined as follows:

(a) "Agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency, but does not include the General Accounting Office, Federal Election Commission, and governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, or government-owned contractor-operated facilities including laboratories engaged in national defense research and production activities.

(b) "Burden" means the total time, effort, or financial resources required to respond to a collection of information, including that to read or hear instructions; to develop, modify, construct, or assemble any materials or equipment; to conduct tests, inspections, polls, observations, or the like necessary to obtain the information; to organize the informa-

tion into the requested format; to review its accuracy and the appropriateness of its manner of presentation; and to maintain, disclose, or report the information.

(1) The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records), will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary.

(2) A collection of information sponsored by a federal agency that is also sponsored by a unit of state or local government is presumed to impose a federal burden except to the extent the agency shows that such state or local requirement would be imposed even in the absence of a federal requirement.

(c) "Collection of information" means the obtaining or soliciting of information by an agency from ten or more persons by means of identical questions, whether such collection of information is mandatory, voluntary, or required to obtain a benefit. For purposes of this definition, the "obtaining or soliciting of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. "Collections of information" are of two mutually exclusive types: "collection of information requirements" and "information collection requests."

(1) A "collection of information" includes the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods. Similar methods may include contracts, agreements, policy statements, plans, rules or regulations, planning requirements, circulars, directives, instructions, bulletins, requests for proposal or other procurement requirements, interview guides, disclosure requirements, labeling requirements, telegraphic or telephonic requests, and standard questionnaires used to monitor compliance with agency requirements.

(2) Requirements by an agency or a person to obtain or compile information for the purpose of disclosure to members of the public or to the public at large, through posting, notification, labeling, or similar disclosure requirements, constitute the "collection of information" whenever the same requirement to obtain or compile information would be a "collection of information" if the information were directly provided to the agency. The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition.

(3) A "collection of information" also includes questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes.

(d) "Collection of information requirement" is the term used for the collection of information by means of agency rule adopted after public notice and comment. The term comprises any form or other written instrument for the collection of information that is published as a part of the rule.

(e) "Director" means the Director of OMB or his designee.

(f) "Display" means:

(1) In the case of forms, questionnaires, instructions, and other written information collection requests individually distributed to potential respondents, to print the OMB control number (and, unless OMB determines it to be inappropriate, the expiration date) in the upper right hand corner of the front page of the request;

(2) In the case of collections of information published in regulations, guidelines, and other issuances in the Federal Register to publish the OMB control number in the Federal Register (as part of the regulatory text or as a technical amendment) and ensure that it will be included in the Code of Federal Regulations if the issuance is also included therein;

(3) In other cases, and where OMB determines that special circumstances exist, to use other means to inform potential respondents of the OMB control number (and, unless OMB determines it to be inappropriate, the expiration date).

(g) An "Education agency or institution" means any public or private agency or institution with the primary function of education.

(h) "A Federal education program" means any federal activity with a primary purpose of offering instruction or affecting an educational agency's or institution's ability to offer instruction.

(i) "Independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, National Credit Union Administration, and any other similar agency designated by statute as a Federal independent regulatory agency or commission.

(j) "General purpose statistics" are those collected chiefly for public and general government uses, without primary reference to policy or program operations of the agency collecting the information.

(k) "Information" means any statement of fact or opinion, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, magnetic tapes, or other media. "Information" does not generally include items in the following categories; however, OMB may determine that any specific item constitutes "information":

(1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments, provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument;

(2) Samples of products or of any other physical objects;

(3) Facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency or through nonstandardized oral communication in connection with such direct observations;

(4) Facts or opinions submitted in response to general solicitations of comments from the public, published in the Federal Register or other publications, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition to the agency's full consideration of the comment;

(5) Facts or opinions obtained initially or in follow-on requests, from individuals (including individuals in control groups) under treatment or clinical examination in connection with research on or prophylaxis to prevent a clinical disorder, direct treatment of that disorder, or the interpretation of biological analyses of body fluids, tissues, or other specimens, or the identification or classification of such specimens;

(6) A request for facts or opinions addressed to a single person;

(7) Examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations;

(8) Facts or opinions obtained or solicited at or in connection with public hearings or meetings;

(9) Facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information;

(10) Like items so designated by the Director.

(l) "Information collection request" means the method by which an agency communicates the specifications for a collection of information to potential respondents, including a written report form, application form, schedule, questionnaire, oral communication, reporting or recordkeeping requirement, or other similar method.

(m) "Interagency reporting requirement" means any requirement that an agency report information to another agency or agencies.

(n) "Modify" means to approve in part and disapprove in part.

(o) "Penalty" means the imposition by an agency or court of a fine or other punishment; judgment for monetary damages or equitable relief; or revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

(p) "Person" means an individual, partnership, association, corporation, (including operations of government owned contractor-operated facilities), business trust, legal representative, organized group of individuals, state, territory, or local government or component thereof. Current employees of the federal government are excluded from this definition

for purposes of the collection of information within the scope of their employment. Military reservists and members of the National Guard are considered Federal employees when on active duty, and for purposes of obtaining information about duty status. Retired and other former federal employees are included entirely within the definition of "person."

(q) "Practical utility" means the actual, not merely the theoretical or potential, usefulness of information to an agency, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or to make it available to the public, either directly or by means of a public disclosure or labeling requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of general purpose statistics or recordkeeping requirements, "practical utility" means that actual uses can be demonstrated.

(r) "Recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records and includes requirements that information be maintained or retained by persons but not necessarily provided to an agency.

(s) "Reporting requirement" means a requirement imposed by an agency on persons to provide information to another person or to the agency. Reporting requirements may implicitly or explicitly include related recordkeeping requirements.

(t) "Sponsor." A federal agency is considered to "sponsor" the collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person. A collection of information undertaken by a recipient of a federal grant is considered to be "sponsored" by an agency only if:

(1) The recipient of a grant is collecting information at the specific request of the agency; or

(2) The terms and conditions of the grant require specific approval by the agency of the collection of information or the collection procedures.

(u) "Ten or more persons" refers to the persons to whom an information collection request is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the request during that period, including independent state or local entities and separately incorporated subsidiaries or affiliates, but not including employees of the respondent within the scope of their employment, or contractors engaged for the purpose of complying with the information collection request.

(1) Any recordkeeping or reporting requirement contained in a rule of general applicability is deemed to involve ten or more persons.

(2) Any information collection request addressed to all or a substantial majority of an industry is presumed to involve ten or more persons.

#### § 1320.8 Agency Head and Senior Official responsibilities.

(a) Except as provided in § 1320.8(b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act.

(1) The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this Part.

(2) The Senior Official shall independently assess all collections of information to ensure that they meet the criteria specified in § 1320.4(b) and that the agency conducts no collection of information that does not display a currently valid OMB control number.

(b) An agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) Upon request of the Director, the head or the Senior Official of each agency (other than an independent regulatory agency) shall make its services, personnel, and facilities available to OMB for the performance of Paperwork Re-



duction Act functions, unless such head or Senior Official determines in writing that the provision of such resources is impracticable.

§ 1320.9 Delegation of approval authority.

(a) The Director may, after complying with notice and comment procedures of Title 5 U.S.C. Chapter 5, delegate OMB review of some or all of an agency's collections of information to the Senior Official, or to the agency head with respect to those components of the agency for which he has not delegated authority.

(b) No delegation of review authority shall be made unless the agency demonstrates to OMB that the Senior Official or agency head to whom the authority would be delegated:

(1) Is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved, and

(2) Has sufficient resources to carry out this responsibility effectively.

(c) OMB may limit, condition, or rescind, in whole or in part, at any time, such delegations of authority, and reserves the right to review any individual collection of information, or part thereof, sponsored by an agency, at any time.

§ 1320.10 Information collection budget.

Each agency's Senior Official, or agency head in the case of any agency for which the agency head has not delegated responsibility under the Act for any component of the agency to the Senior Official, shall develop and submit to OMB, in such form and in accordance with such procedures as OMB may prescribe, an annual comprehensive budget for all collections of information from the public to be conducted or sponsored by the agency in the succeeding twelve months. If during the course of such year, the agency proposes a collection of information not included in the annual budget, it shall, in accordance with such instructions as OMB may provide, either make offsetting reductions in other items in the budget or obtain supplemental authorization for the additional collection. For good cause, and where it is possible to meet its statutory responsibilities by other means, OMB may exempt any agency from this requirement.

§ 1320.11 Agency submissions of collections of information.

(a) Agency submissions of collections of information for OMB review may only be made by the agency head or Senior Official, or their designee. Submissions shall be made in accordance with such procedures and in such form as the Director may prescribe. Submissions shall provide sufficient information to permit consideration of the criteria set out in § 1320.4 (b) and (c), shall include an estimate of burden, calculated in a manner prescribed by OMB, shall identify any significant burdens placed on a substantial number of small businesses or other small entities, and shall contain such additional supporting material as the Director may request.

(b) Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

(c) OMB shall review all agency submissions in accordance with the standards set forth in § 1320.4 (b) and (c).

(d) In determining whether to approve, disapprove, modify, review, initiate proposals for changes in or stay the effectiveness of its approval of, any collection of information, OMB shall consider any public comments received, and may provide the agency and interested persons additional opportunities to be heard or to submit statements in writing.

(e) Agencies shall submit collections of information contained in proposed rules published for public comment in the Federal Register in accordance with the requirements set forth in § 1320.13. Agencies shall submit collections of information contained in current regulations that were published as final rules in the Federal Register in accordance with the requirements set forth in § 1320.14. Agencies shall submit information collection requests other than those contained in regulations published as final rules in the Federal Register, in accordance with the requirements set forth in § 1320.12. Special rules for clearance and inventory of collections of information prescribed by an agency, but collected by another agency, are set forth in § 1320.15. Special rules for emergency processing of information collection requests are set forth in § 1320.17.

(f) Prior to the expiration date assigned to a collection of information, after consultation with the agency, OMB may decide to review the collection of information, and shall so notify the agency. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of the initial submission were materially in error. Upon such notification, the agency shall submit the information collection request or re-

quirement for review under the procedures outlined in § 1320.12 or § 1320.14. The agency may continue to sponsor the collection of information while the submission is pending. For good cause, after consultation with the agency, OMB may stay the effectiveness of its approval of any information collection request not specifically required by agency rule, whereupon the agency shall cease sponsoring such request while the submission is pending, and shall publish a notice in the Federal Register to that effect.

(g) Whenever the persons to whom a collection of information is addressed are primarily educational agencies or institutions or whenever the purpose of such activities is primarily to request information needed for the management or formulation of policy related to federal education programs, or research or evaluation studies related to implementation of federal education programs, the collection of information shall be submitted to OMB in accordance with the procedures outlined in this Part. Such request or requirement will be reviewed by the Federal Education Data Acquisition Council (FEDAC), or organizational unit fulfilling the same statutory function within the Department of Education, prior to approval or disapproval by OMB. Collections of information addressed to educational agencies or institutions and submitted to the Secretary of Education under the provisions of Title 20 U.S.C. Section 1221-3 shall be submitted by the Secretary of Education to OMB for approval in accordance with procedures contained in this Part, in time to receive OMB approval and to be announced publicly by the agency by the February 15 preceding the school year in which the information is to be collected.

(h) No substantive or material modification may be made by an agency in an information collection request or requirement after it has been assigned an OMB control number unless the modification has been submitted to OMB for review and approval pursuant to the procedures outlined in this Part.

(i) OMB will reconsider its disapproval of a collection of information upon the written request of an agency head or Senior Official only if the sponsoring agency can provide significant new or additional information relevant to the original decision.

(j) For purposes of time limits for OMB review of collections of information, any submission received by OMB after 12:00 noon will be deemed to have been received on the following business day.

#### § 1320.12 Clearance of information collection requests.

Agencies shall submit all collections of information, other than those contained in proposed rules published for public notice and comment, or in current regulations that were published as final rules in the Federal Register, in accordance with the following requirements:

(a) On or before the day of submission to OMB, the agency shall forward a notice to the Federal Register stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed information collection request and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the Federal Register, together with the date of expected publication, shall be included in the agency's submission to OMB.

(b) Within 60 days of its receipt of a proposed information collection request, OMB shall notify the agency involved of its decision to approve, modify, or disapprove the request and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of an information collection request, OMB shall assign a control number and an expiration date. OMB shall not approve any information collection request for a period longer than three years.

(c) If OMB fails to notify the agency of its approval, disapproval, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number, which shall be valid for not more than one year.

(d) No information collection request may become effective until the agency has displayed a valid OMB control number (and, unless OMB determines it to be inappropriate, an expiration date).

#### § 1320.13 Clearance of collection of information requirements in proposed rules.

Agencies shall submit collection of information requirements contained in proposed rules published for public comment in the Federal Register in accordance with the following requirements:

(a) The agency shall include in the preamble to the Notice of Proposed Rulemaking a statement that the collection of information requirements contained in the rule have been submitted to OMB for review under Section 3504(h) of the Act. The statement shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(b) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the Federal Register, in such form and in accordance with such procedures as the Director may direct. Such submissions shall include a copy of the proposed regulation and preamble.

(c) Within 60 days of publication of the proposed rule, OMB may file public comments on collection of information provisions. Such comments shall be in the form of an OMB Notice of Action, which shall be sent to the Senior Official or agency head, or their designee, and which shall be made a part of the agency's rulemaking record.

(d) If an agency submission is not in compliance with paragraph (b) of this section, OMB may disapprove the collection of information requirement in the proposed rule within 60 days of receipt of the submission. If an agency fails to submit a collection of information requirement subject to this Section, OMB may disapprove it at any time.

(e) When the final rule is published in the Federal Register, the agency shall explain how the final rule responds to any comments received from OMB or the public. The agency shall include an identification and explanation of any modifications made in the rule, or explain why it rejected the comments. If requested by OMB, the agency shall include OMB's comments in the preamble to the final rule.

(f) If OMB has not filed public comments pursuant to § 1320.13(c), or has approved the collection of information requirement contained in a rule before the final rule is published in the Federal Register, OMB may assign a control number prior to publication of the final rule, and the agency may display the number in its publication of the final rule.

(g) On or before the date of publication of the final rule, the agency shall submit the final rule to OMB, unless it has been approved pursuant to § 1320.13(f) (and not substantively or materially modified by the agency after approval). Not later than 60 days after publication OMB shall approve, modify, or disapprove the collection of information requirement contained in the final rule. Any such disapproval may be based on one or more of the following reasons, as determined by OMB:

(1) The agency failed to comply with paragraph (b) of this section;

(2) The agency had substantially modified the collection of information requirement contained in the final rule from that contained in the proposed rule, without providing OMB with notice of the change of sufficient information to make a determination concerning the modified collection of information requirement, at least 60 days before publication of the final rule; or

(3) In cases where OMB had filed public comments pursuant to paragraph (c) of this section, the agency's response to such comments was unreasonable, and the collection of information is unnecessary for the proper performance of the agency's functions.

(h) After making such decision to approve, modify, or disapprove a collection of information requirement, OMB shall so notify the agency. If OMB approves the collection of information requirement, or if it has not acted upon the submission within the time limits of this Section, OMB shall assign a control number. If OMB disapproves the collection of information requirement, it shall make the reasons for its decision publicly available.

(i) OMB shall not approve any collection of information requirement for a period longer than three years. Approval of any collection of information submitted under this Section will be for the full three-year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(j) After receipt of notification of OMB's approval, disapproval, or failure to act, and prior to the effective date of the rule, the agency shall publish a notice in the Federal Register to inform the public of OMB's decision. If OMB has approved or failed to act upon the collection of information requirement, the agency shall include the OMB control number in such notice. A collection of information requirement may not become effective until OMB has assigned a control number, and such number is displayed.

#### § 1320.14 Clearance of collections of information in current rules.

Agencies shall submit reporting and recordkeeping requirements contained in current regulations that were published as final rules in the Federal Register in accordance with the following procedures:

(a) Collections of information not previously reviewed by OMB or the General Accounting Office, and not assigned currently valid control numbers, shall be submitted to OMB for review prior to December 31, 1983 in accordance with an orderly schedule to be developed by the agency with OMB concurrence. Previously approved collections of information subject to this section shall be submitted not later than 90 days before the expiration date of the OMB control number assigned to the collection.

(b) On or before the day of submission to OMB, the agency shall forward a notice to the Federal Register stating that OMB review is being sought. The notice shall direct requests for information, including copies of the collection of information and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the Federal Register, together with the date of expected publication, shall be included in the agency's submission to OMB.

(c) Within 60 days of its receipt of a collection of information submission, OMB shall notify the agency involved of its decision whether to approve or to initiate proposals for change in the collection and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of a collection of information, OMB shall assign a control number and an expiration date.

(d) OMB shall not approve any collection of information for a period longer than three years. Approval of any collection of information submitted under this Section will be for the full three year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(e) If OMB fails to notify the agency of its approval, decision to initiate proposals for change, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number, which shall be valid for not more than one year. Upon assignment of a control number by OMB, the agency shall display such number in accordance with § 1320.7(f)(2).

(f) If OMB has notified the agency of a decision to initiate proposals for change in the collection of information it shall extend the existing approval of the collection for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under § 1320.12(b) or § 1320.13(g), as appropriate. In the case of a collection of information not previously approved, a control number shall be granted for such period. The agency shall publish a notice on the agency's next practicable publication date in the Federal Register to inform the public that OMB has initiated proposals for change in the collection, and has granted or extended its approval of the collection of information.

(g) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the Federal Register. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, modification, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the requirement, publication of the above in the Federal Register and submission to OMB shall initiate OMB clearance procedures under Section 3504(h) of the Act and § 1320.13. If the agency does not employ notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of such notice and submission to OMB shall initiate OMB clearance procedures under Section 3507 of the Act and § 1320.12. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

(h) OMB may disapprove in whole or in part, any collection of information subject to the procedures of this section if the agency:

(1) Has refused within a reasonable time to comply with an OMB directive to submit the collection of information for review;

(2) Has refused within a reasonable time to initiate procedures to change the collection of information; or

(3) Has refused within a reasonable time to publish a final rule containing the collection of information, with such changes as may be appropriate, or otherwise complete the procedures for amendment or rescission of the collection of information.

(i) Upon disapproval by OMB of a collection of information subject to this section, the OMB control number assigned to such collection shall immediately expire, and no agency shall conduct or sponsor such collection of information. Any such disapproval shall constitute disapproval of the collection of information request or requirement contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting request or requirement directed at the same collection of information and therefore constituting essentially the same request or requirement.

§ 1320.15 Collections of information prescribed by another agency.

(a) Any collection of information prescribed by an agency and to be adopted as a Standard or Optional Form after approval by the General Services Administration (GSA) shall be submitted to OMB for approval through GSA in accordance with such procedures and in such form as the Director may prescribe.

(1) Standard and Optional Forms used for the collection of information must be approved by OMB and assigned a currently valid control number before they can be used.

(2) GSA, with the assistance of the agencies using the forms, shall submit annually to OMB a list of all Standard and Optional Forms in use during that year for the collection of information from the public, stating which agencies use these forms, the number of each form used by each agency, and an estimate of the burden required to complete each form. Burden estimates developed by GSA will be counted as burden imposed by each agency in proportion to the use of the information.

(b) Any other collections of information prescribed by an agency but collected by another agency or agencies shall be submitted to OMB for approval by the agency that prescribes the collection, in accordance with such procedures and in such form as the Director may prescribe. With the assistance of the agencies collecting the information, the agency making the submission shall inform OMB of which agencies collect the information and an estimate of the burden of the collection of information. Burden estimates developed by the submitting agency will be counted as burden imposed by each agency in proportion to their use of the information.

(c) In other respects, collections of information under this Section shall be treated under the standards and procedures of § 1320.11-14, as appropriate.

§ 1320.16 Interagency reporting.

In accordance with authorities in the Act, the Federal Records Act, and the Budget and Accounting Procedures Act, the General Services Administration (GSA) is directed to issue regulations or requirements for the management of interagency reporting and provide for the approval and clearance of interagency reporting, whether mandatory or voluntary. Upon request, GSA shall report to the Director on the status of interagency reporting. Judicial branch requirements contained in court orders or decrees and OMB and other Executive Office of the President requirements shall be exempt from the provisions of this section.

§ 1320.17 Emergency and expedited processing.

An agency head or the Senior Official may request emergency processing of submissions of information collection requests.

(a) Any such request shall be accompanied by a written determination that the collection of information is essential to the mission of the agency, and that public harm will result if normal clearance procedures are followed, or that an unanticipated event has occurred which will prevent or disrupt the collection of information or cause a statutory or judicial deadline to be missed if normal procedures are followed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) OMB shall approve or disapprove each such submission within the time period stated under § 1320.17(b), provided such time period is consistent with the purposes of the Act.

(e) If OMB approves the collection of information it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

(f) Upon request by an agency, OMB may agree to act on a collection of information submission on an expedited schedule, even though such submission may not qualify for emergency processing under this section.

§ 1320.18 Public access.

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. Notwithstanding other provisions of this rule, requirements to publish public notices or to provide materials to the public may be modified or waived by the Director to the extent that public participation in the approval process would defeat the purpose of the collection of information; jeopardize the confidentiality of proprietary, trade secret, or other confidential information; violate state or federal law; or substantially interfere with an agency's ability to perform its statutory obligations. Provisions of this paragraph guaranteeing public availability of comments on agency collections of information will not be waived or modified.

(b) Agencies conducting or sponsoring an information collection request shall take reasonable steps to inform potential respondents of the identity of the federal agency sponsoring any collection of information, why the information is being collected, how it is to be used, whether responses to the request are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority), and the nature and extent of confidentiality to be provided, if any (citing authority).

§ 1320.19 Independent regulatory agency override authority.

An independent regulatory agency may override OMB's disapproval or stay of effectiveness of approval of a collection of information by majority vote of its members or commissioners. The agency shall certify any such override to the Director, and shall explain in writing its reasons for exercising the override authority. OMB shall promptly assign an OMB control number, valid for the length of time requested by the agency, up to three years, to any information collection request or collection of information requirement as to which this authority is exercised. No override shall become effective until the independent regulatory agency has displayed the OMB control number.

§ 1320.20 Other authority.

(a) The Director shall determine whether any collection of information or other matter is within the scope of the Act, or of this Part.

(b) In appropriate cases, after consultation with the agency, the Director may initiate a rulemaking proceeding to determine whether an agency's collection of information is consistent with statutory standards. Such proceedings shall be in accordance with informal rulemaking procedures under Title 5 U.S.C. Chapter 5.

(c) Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by the Director.

(d) To the extent permitted by law, the Director may waive any requirements contained in this Part.

(e) Nothing in this Part shall be interpreted to limit the authority of the Director under the Paperwork Reduction Act of 1980 or any other law. Nothing in this Part or the Paperwork Reduction Act shall be interpreted as increasing or decreasing the authority of OMB with respect to the substantive policies and programs of the agencies.

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