

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.

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

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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 _____ (30 days after publication).

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

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(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

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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

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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.

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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 Circulars 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:

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(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 information 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."

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- (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;

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- (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.

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(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.

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1320.8 Agency Head and Senior Official Responsibilities

(a) Except as provided in 1320.8(b) below, 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 Reduction 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

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(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).

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(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 requirement 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

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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,

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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

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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) 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.

(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) above;

(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 and sufficient information to

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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) above, 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

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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.

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(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.

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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.