PRELIMINARY DRAFT (February 3, 1997)

THE PAPERWORK REDUCTION ACT

OF 1995:

IMPLEMENTING GUIDANCE

[REQUEST FOR COMMENTS: Please provide comments by June 30, 1997, to your agency's Desk Officer or to Jeff Hill, Rm. 10202 NEOB, OMB, Washington, D.C. 20503 (fax: 202/395-7285; e-mail: Hill_J@a1.eop.gov). Please provide comments on Appendix C, "Answers to Frequently Asked Statistical Questions," to Jerry Coffey, at the same address (fax: 202/395-7245; e-mail: Coffey_J@a1.eop.gov).]

[We are interested in your comments concerning not only what is in this preliminary draft, but also what should be in it. For example, are there questions that you have had about how to implement the Paperwork Reduction Act that are not answered in this draft? Suggested text, i.e., suggested answers to these questions would be most helpful. In addition, Appendix A contains examples of Federal Register Paperwork Reduction Act notices; if you are aware of examples that you would suggest are more suitable as a model for other agencies, please provide them (with formal citation). We plan to use comments on this preliminary draft that point out a need to consider amending the OMB implementing regulation, the OMB Form 83-I, or the instructions for the Form or the Supporting Statement in preparing the final version of this implementing guidance.]

PREFACE

The Office of Management and Budget is issuing this Implementing Guidance to support agency compliance with the Paperwork Reduction Act of 1995 (PRA). Since 1942, the PRA and its predecessors have established policy and procedural requirements instructing agencies how to collect information. The Office of Management and Budget (OMB) reviews, approves or disapproves proposed agency information collections in light of the policy criteria and internal agency planning procedures established by the PRA.

Although the scope of the PRA and its provisions have changed over the years, the underlying policy standards of the PRA remain the same. An agency's collection of information is to--

- minimize the burden on respondents and the cost of the collection to the agency,
- serve an agency purpose,
- meet a specific agency need,
- maximize practical utility, and
- not unnecessarily duplicate available information.

This Implementing Guidance describes the responsibilities and authorities applicable to the collection of information under the Paperwork Reduction Act of 1995. First, it describes the responsibilities of each agency that conducts or sponsors a collection of information, whether it consists of a questionnaire, a recordkeeping requirement, a third-party disclosure, a label, or any other form of collection of information from the public. Second, the Implementing Guidance sets forth the responsibilities and authorities of the OMB.

This Implementing Guidance is organized as a reference tool. It begins with a general discussion of the PRA and its primary policy criteria. It then becomes more specific, discussing how an agency should plan and evaluate each draft information collection, as called for by the PRA, the OMB regulation implementing the PRA, and the OMB Form 83-I. OMB Form 83-I, together with the Supporting Statement and other necessary documentation, is the means by which each agency submits to OMB a proposed collection of information for review and approval. Each of these documents is included as an Appendix in this Implementing Guidance. The Appendices also include examples of PRA notices published in the Federal Register, suggested procedures for estimating burden, and answers to frequently asked statistical questions.

The Table of Contents is organized to help identify where to look for answers to specific questions. OMB staff are also available to discuss detailed issues and answer questions about individual collections of information.

This Implementing Guidance is based on the PRA, and OMB's 55 years of experience in overseeing agency compliance with the PRA and in working with agencies to understand its underlying policy standards. It replaces the Information Collection Review Handbook, issued January 1989.

TABLE OF CONTENTS

PRELIMINARY DRAFT (February 3, 1997)

CHAPTER I. THE PAPERWORK REDUCTION ACT OF 1995

This chapter summarizes the paperwork control provisions of the Paperwork Reduction Act of 1995.

A. WHAT DOES THE PAPERWORK REDUCTION ACT DO?

1. Basic Structure. The Paperwork Reduction Act (PRA)[1] requires each Federal agency[2] to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons,[3] or continuing a collection for which the OMB approval and validity of the OMB control number are about to expire.[4] Under the PRA, OMB approval for an agency to use each information collection instrument can last a maximum of three years.[5] The PRA states--

> "An agency shall not conduct or sponsor the collection of information unless, in advance ... the [OMB] Director has approved the proposed collection of information ... and the agency has obtained from the [OMB] Director a control number to be displayed upon the information collection."[6]

> "Before approving a proposed collection of information, the [OMB] Director shall determine whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility."[7]

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[1] The Paperwork Reduction Act of 1995 (P.L. 104-13) took effect on October 1, 1995. Its predecessors are the Paperwork Reduction Reauthorization Act of 1986 (Section 101(m) [Title VIII, Part a] of P.L. 99-500 (October 18, 1986) and P.L. 99-591 (October 30, 1986), 100 Stat. 1783-335, 3341-335); the Paperwork Reduction Act of 1980 (P.L. 96-511, 94 Stat. 2812); and the Federal Reports Act of 1942 (P.L. 77-831, 56 Stat. 1078). The PRA is codified at Chapter 35 of Title 44, United States Code.

The PRA established the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) to administer the PRA. 44 U.S.C. 3503.The PRA covers all aspects of Federal information resources management, including OMB review and approval of each agency collection of information and the reduction of information collection burden; agency dissemination of and public access to information; statistical activities; records management activities; privacy, confidentiality, security, disclosure, and sharing of information; and the acquisition and use of information technology and telecommunications. 44 U.S.C. 3504(a)(1)(A). "The [OIRA] Administrator shall serve as principal adviser to the [OMB] Director on Federal information resources management policy." 44 U.S.C. 3503(b). See also Section 3 in P.L. 96-511, 94 Stat. 2825-26.

[2] For discussion of which Federal agencies are subject to the PRA, see Chapter II.A.1.

[3] 44 U.S.C. 3502(3)(A)(i).

[4] Once OMB has approved a collection of information, OMB assigns an OMB control number which the agency is required to display to the public. 44 U.S.C. 3507(a)(3).

[5] 44 U.S.C. 3507(g).

[6] 44 U.S.C. 3507(a), (a)(2), and (a)(3).

[7] 44 U.S.C 3508. Cf. "the [OMB] Director is authorized within his discretion to make a determination as to whether or not the collection of information by any Federal agency is necessary for the proper performance of the

(continued...)

"The [OMB] Director may not approve a collection of information for a period in excess of 3 years."[8]

2. Goals. Since 1942, the scope of the PRA and its detailed provisions have changed. But the underlying policy standards of the Paperwork Reduction Act have been the same.[9] An agency's collection of information is to--

- minimize the burden on respondents and the cost of the collection to the agency,
- serve an agency purpose,
- meet a specific agency need,
- maximize practical utility, and
- not unnecessarily duplicate available information.[10]

At the same time, the PRA recognizes the importance of information to the successful performance of agency missions.

The PRA states these goals more broadly. The basic paperwork obligations of the agencies and OMB are to--

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[7](...continued)
functions of such agency or for any other purpose." Section 3(d) of the "Federal Reports Act of 1942," P.L. 77-831, 56 Stat. 1078.

[8] 44 U.S.C. 3507(g). See 53 Fed. Reg. 16621, including footnote 6 (May 10, 1988).

[9] The legislative history stresses this basic continuity. "Section 2 of the Paperwork Reduction Act of 1995 is drafted in the form of a complete recodification of chapter 35 of title 44, United States Code, due to the number of changes made. The modifications include word changes made for reasons of clarity and consistency, the deletion of obsolete provisions, the reorganization of sections, and substantive amendments made to update and strengthen the original purposes of the Paperwork Reduction Act of 1980. As stated in report accompanying S. 244 (S. Rpt. 104-8):

"'To the extent the legislation is a restatement of the 1980 Act, as amended in 1986, the scope, underlying purposes, basic requirements, and legislative history of the law are unchanged. To the extent the legislation modifies provisions in current law, the amendments are made strictly for the purposes described in this report, and in order to further the purposes of the original law.' (S.Rpt. 104-8 at page 3)

"The report accompanying H.R. 830, H. Rpt. 104-37, expressed essentially the same views regarding the preservation of the Act's legislative history. (See, H. Rpt. 104-37 at page 35)." H. Rpt. 104-99, 104th Cong., 1st Sess. (April 3, 1995), 27-28.

[10] As President Clinton said, on signing the PRA, "[t]his Paperwork Reduction Act helps us to conquer a mountain of paperwork that is crushing our people and wasting a lot of time and resources and which actually accumulated not because anybody wanted to harm the private sector but because we tend to think of good ideas in serial form without thinking of how the overall impact of them impacts a system that is very dynamic... ." Presidential Documents, Vol. 31, No. 21, p. 885 (May 29, 1995).

"Minimize the Federal paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and others outside the Federal government."

"Ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government."

"Minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information."[11]

"Ensure the integrity, quality, and utility of the Federal statistical system."[12]

"Ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public."[13]

The PRA imposes requirements on each agency and on OMB. It requires each agency to take these policy considerations into account during its development of each new collection of information and making decisions regarding the extension of ongoing collections of information. It also charges OMB with the responsibility for assuring a proper weighing of the burdens imposed by each collection on the public against the legitimate needs and usefulness of the information for the Federal agencies.[14]

3. How is the public protected by the PRA? The public is protected against a collection of information that does not meet the requirements of the PRA. Specifically, if a collection of

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[11] 35 U.S.C. 3501(1), (2), and (5). These policy criteria have basically been the same for 55 years: "It is hereby declared to be the policy of the Congress that information which may be needed by the various Federal agencies should be obtained with a minimum burden upon business enterprises (especially small business enterprises) and other persons required to furnish such information, and at a minimum cost to the Government, that all unnecessary duplication of efforts in obtaining such information through the use of reports, questionnaires, and other such methods should be eliminated as rapidly as practicable; and that information collected and tabulated by any Federal agency should insofar as is expedient be tabulated in a manner to maximize the usefulness of the information to other Federal agencies and the public." Section 2 of the "Federal Reports Act of 1942," P.L. 77-831, 56 Stat. 1078. For discussion of criteria for OMB approval of collections of information, see Chapter IV.

[12] 35 U.S.C. 3501(9).

[13] 35 U.S.C. 3501(10).

[14] The PRA specifically directs OMB to "(1) review and approve proposed agency collections of information; (2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition and payment, and to reduce information collection burdens on the public; (3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected; [and] (4) maximize the practical utility of and public benefit from information collected by or for the Federal Government... ." 44 U.S.C. 3504(c).

information does not display a currently valid OMB control number,[15] fails to inform the respondent that response is not required unless the collection of information displays a valid OMB control number,[16] or has been disapproved by OMB,[17] then the public is not obligated to respond. As stated in the PRA--

> "Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to [the PRA] if--
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> "(1) the collection of information does not display a valid control number ... ; or
>
> "(2) the agency fails to inform the [respondent] that such person is not required to respond to the collection of information unless it displays a valid control number.
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> "The protection provided by this [provision] may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto."[18]

4. What information is covered? Specific types of collection of information include--

   - Requests for information for transmission to the Federal government, such as grant application forms, written report forms, telephone surveys, and electronic data collections.

   - Recordkeeping requirements, which may involve compilation and maintenance of records, either alone or in conjunction with the reporting of information to the agency and/or some other person.

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[15] 44 U.S.C. 3512(a)(1), 5 CFR 1320.6(a)(1).

[16] 44 U.S.C. 3512(a)(2); 5 CFR 1320.6(a)(2).

[17] Action Alliance v. Senior Citizens v. Bowen, CA No. 83-0285 (D.C.D.C., filed May 26, 1987), slip op. 5-6 ("OMB acted within its power under the Federal Reports Act [of 1942, the predecessor to the PRA] to disapprove the self-evaluation provision of the government-wide regulation. As a result, the self-evaluation provision of the government-wide regulation was rendered unenforceable."), aff'd 846 F.2d 1449 (D.C. Cir. 1988), vacated on other grounds, 494 U.S. 1001 (1990), on remand, 930 F.2d 77 (D.C. Cir.), (adopting reasoning from prior D.C. Circuit decision), cert. denied, 112 S. Ct. 371 (1991).

"To the extent, if any, that the [OMB] Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information." 44 U.S.C. 3508. Compare "[t]o the extent, if any, that the [OMB] Director determines the collection of such information by such agency is unnecessary, either because it is not needed for the proper performance of the functions of such agency or because it can be obtained from another Federal agency or for any other reason, such agency shall not thereafter engage in the collection of such information." Section 3(d) of the "Federal Reports Act of 1942,", P.L. 77-831, 56 Stat. 1079.

[18] 44 U.S.C. 3512. For discussion of the "public protection" provision, see Chapter III.

- Third-party or public disclosure requirements, which may involve a requirement for the disclosure of information to other members of the public directly or through publication in some information media, such as a newspaper or magazine, or by posting the information, by supplying the information on labels, or any other means constituting disclosure to third-parties or the public.[19]

Many information collections, recordkeeping requirements, and third-party disclosure requirements are contained in or authorized by regulations as monitoring or enforcement tools, while others appear in questionnaires and their accompanying instructions.

Unless exempted, all agency collections of information are subject to OMB review and approval regardless of whether the collections are implemented through paper, telephone, voice, automation, electronics, or any other collection technique.[20] Exempt collections of information include targeted investigations.[21] The PRA exempts specific entities generally, such as the Federal Election Commission,[22] and OMB has, as a general matter, excepted ten categories of information, such as affidavits and changes of address.[23]

B. WHAT ARE AGENCIES REQUIRED TO DO?

1. Centralized Agency Review. Each agency,[24] through its Chief Information Officer (CIO) which reports directly to the agency head, is to establish a process for reviewing collections of information. The review is occur within an office independent of program responsibility to permit objective evaluation of the need for and respondent burdens imposed by each proposed collection of information.[25] Each agency needs to plan well in advance of sending proposed collections of information for review and approval by OMB.

2. Advance Opportunity for Public Comment. For questionnaires and forms, and for information collections contained in current rules, each agency is to provide the public with 60-day advance notice in the Federal Register and otherwise consult with the members of the public and affected agencies before submitting the information clearance package for OMB review.[26] In

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[19] 44 U.S.C. 3502(3).

[20] 44 U.S.C. 3502(3); 5 CFR 1320.3(c)(1); 60 Fed. Reg. 44978-79 (August 29, 1995). For discussion of the kinds of collection of information covered by the PRA, see Chapter II.B.

[21] 44 U.S.C. 3518(c)(1). For discussion of exempted collections of information, see Chapter II.C.

[22] 44 U.S.C. 3502(1).

[23] 5 CFR 1320.3(h). For discussion of items generally not considered to be collections of information, see Chapter II.D.

[24] Each individual agency has primary responsibility for meeting the paperwork control obligations set forth in the PRA. 44 U.S.C. 3506(a)(1). For discussion, see Chapter V.A.

[25] 44 U.S.C. 3506(c)(1)(A). For discussion of the independent review agencies are to carry out, see Chapter V.B.

[26] 44 U.S.C. 3506(c)(2)(A). For discussion of advance opportunity for public comment, see Chapter V.C. The

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this notice, the agency is to solicit comment on the need for the information, its practical utility, the accuracy of the agency's burden estimate, and on ways to minimize burden, including through "the use of automated collection techniques or other forms of information technology".[27] Only after providing this 60-day notice, and considering changes based on any comments received, does an agency submit its Information clearance packages to OMB for review and approval.

3. How does an agency demonstrate to OMB that it has prepared a collection of information properly? The agency is to make a certification and, in addition, document certain information in the Supporting Statement it provides to OMB as part of its information clearance package.[28]

An agency is to certify that the collection of information meets specific standards "and provide[s] a record supporting such certification, including [the] public comments received by the agency".[29] The certification is to state that the proposed collection of information is needed; not unnecessarily duplicative; "reduces to the extent practicable and appropriate the burden" on respondents, particularly small business, local government, and other small entities;[30] is written in "unambiguous terminology;" is to be implemented in ways consistent with the existing reporting and recordkeeping practices of the respondents; and "indicates for each recordkeeping requirement the length of time" documents are to be retained.[31]

In addition to the certification, each agency is to document in its Supporting Statement that the collection of information imposes the least burden that is necessary for the proper performance of the agency's functions; will not unnecessarily obtain information already accessible to the agency; has practical utility; and minimizes the agency's cost of collection, but without shifting disproportionate costs or burdens onto the public.[32] In addition, the agency is to document how it satisfies the OMB regulatory provisions concerning: frequency and speed of response; the number of copies of documents respondents have to provide; nature and format of information respondents are to keep or submit; the record retention period; statistical surveys; confidential information; display of an expiration date; remuneration of respondents; use of automated collection techniques and other forms of information technology to reduce burden on respondents.[33]

4. Public Notice of OMB Review. Upon submission of the information clearance package to OMB, the agency is to publish a notice in the Federal Register alerting the public to the agency's

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[26](...continued)
public notice that an agency is to provide for a collection of information contained in a proposed rule is discussed in Chapter VII.F.1.

[27] 44 U.S.C. 3507(c)(2)(A)(iv). For discussion of agency responsibility to consider use of automated collection techniques, see Chapters V.C. & VI.F.

[28] See Appendix E for the specific instructions. These instructions are also discussed in Chapters VI & VII.

[29] 44 U.S.C. 3506(c)(3). For discussion of the agency certification to OMB, see Chapter VI.

[30] See, 5 U.S.C. chapter 6.

[31] 44 U.S.C. 3506(c)(3).

[32] 5 CFR 1320.5(d)(1).

[33] 5 CFR 1320.5(d) and 1320.5(a)(1)(C)-(E).

request for approval.[34] In this notice, the agency is to summarize and describe the need for and proposed use of the collection of information; describe likely respondents; estimate the annual burden; and give notice that comments may be provided to the agency and OMB.[35] The agency then submits OMB Form 83-I, "Paperwork Reduction Act Submission," a Supporting Statement, and the draft collection of information together with its supporting documentation to OMB for review.[36]

5. Information for Respondents. If OMB approves the collection, the agency is to display the control number assigned to the collection on the information collection instrument, such as the front page of the questionnaire or survey.[37] In addition, in the collection of information package (including the form, its instructions, the regulatory language containing the collection of information, and other documentation), each agency is to inform respondents of the reasons the information is being collected; the way in which such information is to be used; the estimated burden; whether responses are voluntary, required to obtain a benefit, or mandatory; and the fact that an agency may not conduct or sponsor, and the respondent is not required to respond to, a collection of information unless it displays a valid OMB control number.[38]

C. HOW DOES OMB REVIEW REGULATORY AND NON-REGULATORY COLLECTIONS OF INFORMATION?

The PRA provides three different ways for OMB to review and approve a collection of information, depending on whether it is contained in a proposed or current regulation, or the agency uses some other method of collecting the information.

1. For OMB clearance procedures applicable to forms, i.e., collections of information not contained in proposed rules or current rules, see Chapter VII.E.[39]

These procedures apply to written report forms, grant application forms, telephone surveys, and electronic data collections the provisions for which are not contained in proposed or current regulations. This category also includes collections of information in regulations issued without prior notice and comment, temporary regulations, and interim or interim final regulations (before or while notice and comment rulemaking on the same subject is underway).

However, after OMB has provided initial approval for collections of information in such regulations and the agency has displayed a currently valid OMB control number in the Federal

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[34] 44 U.S.C. 3507(a)(1)(D). For discussion, see Chapter VII.E.1., F.1., & G.1.

[35] 5 CFR 1320.5(a)(1)(iv)(B). For discussion, see Chapter VII.E.1., F.1., & G.1.

[36] For discussion, see Chapter VII.B.

[37] 44 U.S.C. 3507(a)(3).

[38] 44 U.S.C. 3506(c)(1)(B). For discussion of the information to be provided respondents, see Chapter V.D & III.

[39] See, 44 U.S.C. 3507, generally, and 5 CFR 1320.10.

Register, OMB conducts subsequent PRA reviews under the procedures established for "current regulations" (see Paragraph 3, below).

2. For OMB clearance procedures applicable to collections of information contained in proposed rules published for public comment in the Federal Register, see Chapter VII.F.[40]

The procedures for reviewing collections of information in proposed rules are specifically designed to harmonize the requirements of the Paperwork Reduction Act and the Administrative Procedure Act.[41] Note also that if OMB does not approve, but instead files public comments discussing a collection of information in a proposed rule, the agency is obligated to resubmit that collection of information for OMB review on or before the publication of the applicable final rule.[42]

These procedures do not apply to any collection of information contained in a regulation if the collection of information has previously received OMB approval and the agency has displayed the OMB control number in the Federal Register publication of the final rule. Thereafter, it is considered to be a collection of information in a "current regulation" (see Paragraph 3, below).

3. For OMB clearance procedures applicable to collections contained in current regulations published as final rules in the Federal Register, see Chapter VII.G.[43]

These clearance procedures apply to any collection of information that is contained in a regulation already published in the Federal Register that has previously been approved by OMB.

D. WHAT ELSE IS PART OF AN OMB REVIEW?

Under the PRA, OMB is to carry out a review of the details of the collection of information. OMB will also review the collection of information within a broad policy context.

Specifically, OMB is authorized to approve, instruct the agency to make a substantive or material change to, or disapprove each collection of information that an executive branch and independent regulatory agency proposes to undertake or continue in effect.[44] Even if the collection of information is contained in a current rule, OMB is specifically authorized to recommend or

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[40] See, in particular, 44 U.S.C. 3507(d); 5 CFR 1320.11.

[41] 5 U.S.C. Chapter 5.

[42] 5 CFR 1320.11(h).

[43] See, in particular, 44 U.S.C. 3507(h)(1)-(2); 5 CFR 1320.12.

[44] 44 U.S.C. 3507(e)(1).

instruct an agency to make a substantive or material change.[45] Only an independent regulatory agency may override an OMB disapproval.[46]

OMB may review the agencies' paperwork activities within a broad policy context to examine the extent to which related statutory, regulatory, budgetary, and other policy mandates may be driving paperwork requirements. Such review may include fiscal budget, Information Collection Budget, information resources management oversight, procurement policy, regulatory policy, telecommunications policy, Privacy Act, and statistical policy functions.[47] These related OMB reviews and any resulting comment that OMB may provide an agency concerning a collection of information do not eliminate an agency's obligation to make full, formal PRA approval requests covering each of its collections of information to OMB.[48]

E. WHAT IS AN INFORMATION COLLECTION BUDGET?

The Information Collection Budget (ICB) is the vehicle through which OMB, in consultation with each agency, sets "annual agency goals to reduce information collection burdens imposed on the public".[49] Each agency is to develop an ICB that summarizes agency accomplishments in the prior fiscal year and describes agency goals for the following year.[50]

The ICB serves as a management oversight tool and as an adjunct to the transactional case-by-case review of agency requests for approval required by the PRA. Agency officials are able to use the ICB in their internal planning and control processes to review the totality of the collections of information their staff plans to implement during the forthcoming year. OMB uses the ICB in conjunction with management reviews of other agency activities to assess information collection priorities and as a tool to help maintain the lowest necessary level of paperwork burden on the public, consistent with the Federal Government's need for information.

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[45] 44 U.S.C. 3507(h)(2).

[46] 44 U.S.C. 3507(f). For discussion, see Chapter VII.Q.

[47] In short, proper review of an agency's need for information and the corresponding burden on respondents cannot be confined to the end product--the data collection instrument--but also needs to include a careful review of the underlying policies and sources from which paperwork requirements spring--be they statutes, regulations, or policy guidance.

[48] This Guidance covers only the PRA's paperwork control requirements as implemented through OMB's regulation, "Controlling Paperwork Burdens on the Public"; Form OMB 83-I, "Paperwork Reduction Act Submission" (including the instructions for the Form and the Supporting Statement); and OIRA's operating policies and procedures. The following Chapters discuss other requirements of the PRA and other statutes, and other OMB responsibilities, but only to the extent that these requirements and responsibilities may affect paperwork control.

[49] The OMB Director, "in consultation with agency heads," is to "set annual agency goals to (A) reduce information collection burdens imposed on the public that (i) represent the maximum practicable opportunity in each agency; and (ii) are consistent with improving agency management of the process for the review of collections of information established under [44 U.S.C.] 3506(c); and (B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public". 44 U.S.C. 3505(a)(1).

[50] 5 CFR 1320.17.

F. HOW DO THE PUBLIC AND OTHER AGENCIES PARTICIPATE?

At any point, the public has the right to make its views known concerning any Federal collection of information, whether regarding the perceived need to collect the information or the reporting burdens involved.[51] Members of the public and other agencies may submit comments about specific collections of information. Commenters often learn that a particular collection of information is under OMB review by reading the sponsoring agency's Federal Register notices seeking comments on proposed collections of information.

OIRA staff may invite comments about a collection of information from agencies, private sector organizations, and other persons. In some cases, OMB may conduct public hearings to explore issues raised by particular collections of information. Comments and information obtained from the public help OIRA assure that information proposed to be collected is not already available, that the collection will meet the need and purpose for which it was undertaken, and that appropriate efforts are being made to minimize burden and maximize practical utility.

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The following chapters discuss detailed PRA requirements and the ways in which the Act's provisions have been interpreted over the history of the PRA and its predecessors.

[51] For discussion of the opportunities for public involvement in OMB reviews, see Chapter IX.

CHAPTER II. WHAT IS THE SCOPE OF THE PRA?

This chapter identifies which, and under what circumstances, Federal entities are subject to the paperwork control provisions of the PRA. This chapter also describes what types of collections are subject to, and what types are exempted or excepted from, the paperwork control provisions of the PRA.

The PRA applies to each executive agency, unless an agency is exempted explicitly. A collection of information consists of all oral, written, or electronically transmitted expressions[52] of opinion or fact, including disclosures to third-parties or the public, requested or required of ten or more persons by or for the Executive branch, except those specifically exempted[53] or excepted.[54] All collections of information require OMB approval and need to display currently valid control numbers and to inform respondents that response is not required unless the collection of information displays a valid OMB control number.[55]

A. WHAT AGENCY ACTION DOES THE PRA COVER ?

The PRA states that "an **[1] agency** shall not **[2, 4] conduct or [3, 4] sponsor** the collection of information unless ... [OMB] has approved the proposed collection of information".[56]

The terms in **boldface** are discussed below.

1. Which agencies need to comply? Unless there is an explicit exemption, the PRA applies to each executive "agency."[57] Thus, all executive departments, military departments, Government corporations, Government controlled corporations, and other establishments in the Executive branch of the Federal Government (including the Executive Office of the President) need to assure that their collections of information are reviewed and approved by OMB before they are implemented.

a. Independent Regulatory Agencies. In addition, the PRA applies to each "independent regulatory agency." These agencies, listed below,[58] may override an OMB disapproval of a

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[52] 44 U.S.C. 3502(3); 5 CFR 1320.3(c)(1); 60 Fed. Reg. 44978-79 (August 29, 1995).

[53] 44 U.S.C. 3518(c).

[54] 5 CFR 1320.3(h).

[55] 44 U.S.C. 3512; 5 CFR 1320.6(a).

[56] 44 U.S.C. 3507(a) and (a)(3); 5 CFR 1320.3(d).

[57] 44 U.S.C. 3502(1).

[58] Other agencies may be added to this list, but only if they are "designated by statute as a Federal independent regulatory agency or commission." 44 U.S.C. 3502(10); 5 CFR 1320.3(g).

collection of information by following the procedures provided in the PRA and OMB regulations:[59]

Board of Governors of the Federal Reserve System
Commodity Futures Trading Commission
Consumer Product Safety Commission
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Energy Regulatory Commission
Federal Housing Finance Board
Federal Maritime Commission
Federal Trade Commission
Mine Enforcement Safety and Health Review Commission
National Labor Relations Board
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Postal Rate Commission
Securities and Exchange Commission

b. Exempt Agencies. All congressional and judicial agencies of the Federal Government are exempt from all requirements of the PRA. In addition, the PRA specifically exempts the General Accounting Office, the Federal Election Commission, and the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions. Government-owned but contractor operated facilities, including laboratories engaged in national defense research and production operations, are also excluded from the PRA.

Entities chartered by the Federal Government but which do not fall within the definition of an agency are also exempt from the provisions of the PRA. Examples of federally chartered entities that are not covered by the PRA include the various Federal Reserve Banks (but not the Board of Governors of the Federal Reserve System), Federally chartered universities, and like entities.

2. What does it mean to "conduct" a collection of information? An agency conducts a collection of information if it collects the information using its own staff and resources.

3. What does it mean to "sponsor" a collection of information?[60] A sponsoring agency is one that causes another agency to collect information, contracts or enters into a cooperative agreement with a person to collect information, or requires a person to provide information to another person, or otherwise causes another person to obtain, retain, solicit, or require the

[59] 44 U.S.C. 3507(f); 5 CFR 1320.15. See Chapter VII.Q. for a more complete discussion of this authority to override.

[60] The word, "sponsor", is found in 44 U.S.C. 3507(a). A closely equivalent phrase in the definition of "collection of information" is "causing to be obtained". 44 U.S.C. 3502(3)(A).

disclosure to third parties or the public of information by or for an agency.[61] For example, the Department of Labor requires other agencies and persons to obtain weekly payroll data from firms working on Federal construction projects--and is thus the sponsor of that collection of information.

a. When is an agency a sponsor of a recordkeeping requirement? An agency is considered to be the sponsor of all tests, inspections, and measurements conducted by a person if the results of the tests, inspections, and measurements are to be recorded, maintained, disclosed to other persons, or reported to the agency (note that cognitive tests are exempt from the definition of information and thus are generally exempt from PRA coverage[62]).

In some situations, an agency may add a recordkeeping requirement, a third-party disclosure, or other collection of information to a preexisting requirement for the conduct of a test, inspection, or measurement which had not been subject to the PRA. The subsequent requirement for the keeping of records and/or the disclosure or reporting of information, however, would bring the underlying and preexisting testing, inspecting, or measuring requirement under the provisions of the PRA and necessitate OMB approval of those requirements as an integral component of the collection of information. An agency's failure to obtain OMB approval, display a currently valid OMB control number on the testing, inspecting, or measuring requirement, and inform respondents that response is not required unless the testing, inspecting, or measuring requirement displays a valid OMB control number would subject the requirement to the provisions of the "public protection" provision of the PRA and OMB regulations.

b. When is an agency a sponsor of a third-party disclosure? An agency is considered to be the sponsor of all requests or directives for a person to disclose information to other persons--third persons or the public. Third-party disclosure occurs when information is to be provided to other persons. For example, this disclosure may occur through publication of information in a newspaper or other media, posting information on the person's premises, printing information on a label that is distributed with a product, or verbal disclosures directly face-to-face or through, for example, training programs. The only exceptions to this sponsorship are requests or directives for a person to provide a label or otherwise disclose information completely defined by the agency, such as the Surgeon General's warnings about cigarettes.[63]

c. When is an agency a sponsor of a grantee? In general, collections of information conducted by recipients of Federal grants do not require OMB approval. On the other hand, an

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[61] 5 CFR 1320.5(a), 5 CFR 1320.3(d). The broad scope of the concept of "sponsorship" is reemphasized by defining a "collection of information" to be the "obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency". 44 U.S.C. 3502(3)(A). See, also, 44 U.S.C. 3502(13).

[62] 5 CFR 1320.3(h)

[63] "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" the definition of "collection of information". 5 CFR 1320.3(c)(2).

agency is the sponsor of a collection of information undertaken by a recipient of a Federal grant, if the collection meets one or both of the following two conditions: (1) the grant recipient is collecting information at the specific request of the sponsoring agency,[64] or (2) the terms and conditions of the grant require that the sponsoring agency specifically approve the collection of information or the collection procedures.[65] If one or both of these conditions is met, the agency sponsoring the collection needs to seek and obtain OMB approval, and the grantee needs to display the OMB control number on the collection instrument.

d. When is an agency a sponsor of a privately conducted survey? Public endorsement of a survey to be carried out by private party in order to serve the agency's needs may cause the agency to appear to "sponsor" a survey (particularly if the agency reviews and comments upon the text of the survey during its consideration of whether to endorse it), and thus obligate the agency to seek and obtain OMB approval before the private party implements the survey.

4. How does the PRA apply to collections of information from State and local governments? Agency requests for State or local governments to provide the agency with information constitute a collection of information requiring OMB approval, as are agency requests for respondents to provide information to State or local governments.[66] Collections of information conducted by State or local agencies under contract or in cooperation with a Federal agency are considered to be sponsored by the Federal agency and need to be approved by OMB.[67]

The State or local government may, however, include questions in such a collection of information that were not requested by the Federal agency. If the added questions or modification of the Federal form require agency approval, the agency also needs to obtain OMB approval. If the added questions or modification of the form do not require the Federal agency's approval and do not change the nature of the Federal collection of information, they are considered to be a collection of information by the State or local entity, do not constitute a collection of information subject to the PRA, and do not require OMB approval.

5. Is the PRA limited in scope geographically? The PRA does not differentiate between collections of information by the place in which they are conducted or sponsored or by the respondents' national origin. The general rule is that collections of information require OMB approval under the PRA even though all or some of the respondents may be foreign nationals or entities in their country of origin.

The United States may ask other nations to provide information to it. Such requests between sovereign nations are not covered by the PRA and do not require OMB approval. Nevertheless,

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[64] For example, when a grant solicitation requests that a survey or other information collection be conducted to address the subject for which the grant is made; this request may be a general call for the collection of information, may specify research topics or methods, or may even prescribe individual questions.

[65] 5 CFR 1320.3(d)(1) & (2).

[66] 44 U.S.C. 3502(3)(A); 5 CFR 1320.3(c)(4).

[67] 5 CFR 1320.3(d)

OMB PRA approval needs to be obtained if the other government(s) will have to conduct a collection of information to comply with the request of the United States. Under these circumstances the collection is sponsored by the United States agency making the request and needs to be approved by OMB.[68]

Agencies and instrumentalities of the United States may enter into arrangements with foreign governments or entities to collect information that do not require OMB PRA approval. In general, these are situations where the United States is neither conducting nor sponsoring the collection of information but is acting as a technical consultant to the other government. Examples of such arrangements include the providing of technical advice about the design, methodology, and processing of collections of information, and participating as an advisor in the actual collecting of information from the other government's nationals.

B. WHAT TYPES OF COLLECTIONS ARE COVERED?

The PRA states that an "agency shall not conduct or sponsor the **[1] collection of information** unless ... [OMB] has approved the proposed **[1] collection of information**".[69]

The PRA defines the phrase "**[1] collection of information**" to be "the obtaining, causing to be obtained, soliciting, or requiring the **[5] disclosure to third parties or the public**, of facts or opinions by or for an agency, **[1] regardless of the form or format**, calling for either--

"(i) answers to **[2] identical questions** posed to, or identical reporting or **[6] recordkeeping requirements** imposed on, **[4] ten or more [3] persons**, other than agencies, instrumentalities, or employees of the United States; or

"(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for **[7] general statistical purposes**".[70]

The terms in **boldface** are discussed below.

1. "Collection of Information." The PRA defines and uses "collection of information" very broadly. The PRA defines a "collection of information" to mean "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public" of facts or opinions

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[68] The collection of information requires OMB approval to the extent that it would be a collection of information if it were conducted by the United States agency that asked for the information, and, in particular, that specified the information to be collected by the foreign government. The document or instrument that requires OMB approval is the request by the agency to the other government-- not the forms, schedules, questionnaires, or other methods used by the other government--to collect the information from its nationals.

[69] 44 U.S.C. 3507(a) & (a)(3).

[70] 44 U.S.C. 3502(3)(A).

"regardless of [the] form or format" used.[71] Written in very general terms, the definition contains very few limits in scope or coverage. As a result, collections of information may be found in agency agreements, policy statements, plans, application forms, rules or regulations, planning requirements, audit guides, compliance directives, requests for proposal or other procurement requirements, contracts, agency handbooks, interview scripts and interview guides, manuals, questionnaires, research requirements, rules or regulations, standard questionnaires, and electronic transmission requirements used to monitor compliance with agency requirements. Third-party disclosures may take the form of labeling, notification, or posting provisions or electronic transmissions.

a. Method of Collection. The mechanism or method by or through which an agency conducts or sponsors a collection of information does not affect the requirement that the agency seek OMB review and obtain OMB approval. Collections of information and third-party disclosures may be conducted by--

- Mail;
- personal or telephone interview or group interviews (such as focus group sessions);
- Communication via electronic media;
- Automated, electronic, mechanical, or other technological collection techniques (such as electronic transmissions from airplanes or boats to ground or satellite receiving stations); or
- Any other approach through which the respondent or potential respondent is able to provide the response, recordkeeping, or disclosure called for.[72]

b. Respondent's Obligation to Comply. The nature of a respondent's obligation to respond to or otherwise comply with a collection of information does not affect the agency's responsibility to obtain OMB review and approval of the collection of information. Response to a collection of information may be entirely voluntary, may be required to obtain or retain a benefit (such as a passport or social security payment), or may be mandatory (with civil or criminal sanctions imposed for failure to respond).[73]

c. Purpose of Collection. Unless a collection of information is specifically exempted or excepted, the purpose for which a collection of information is undertaken does not affect an agency's obligation to obtain OMB review and approval.

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[71] 44 U.S.C. 3502(3)(A).

[72] 5 CFR 1320.3(c)(1); 60 Fed. Reg. 44978-79 (August 29, 1995).

[73] See 5 CFR 1320.8(b)(3)(iv).

2. "Identical Questions." To be a collection of information, ten or more persons need to be asked to report, provide, disclose, or record information in response to "identical questions."[74] In the context of disclosures to third-parties or the public, "identical" refers to the information that is to be disclosed.

Whether a question is "identical" depends on whether each respondent is being asked to provide the same level of information on the same subject. Identical questions need not be phrased exactly the same way each time they are asked, nor does each respondent need to be asked the same "set of questions."

Identical questions may be questions asked from within a set of questions or plan of inquiry, or specific question(s) which depend on respondents' replies to prior questions or to classifications made by the sponsoring agency, perhaps on the basis of observation by a person representing the sponsoring agency. For example, survey information can be obtained by means of one general question, or, instead, by more specific variants of the general question tailored to the circumstances of each respondent. Since both types of question request the same information, they should be viewed as identical questions under the PRA.

On the other hand, if the reporting, recordkeeping, or disclosure provisions are not "identical", then the reporting, recordkeeping, or disclosure provision is generally exempt. For example, OMB does not consider nonspecific or nondirective reporting, recordkeeping, or disclosure provisions--such as those that ask for "facts or opinions" that the respondent wishes to provide on a specific topic without further specification of the information being sought and a means of demonstrating compliance--as "identical." Such nondirective questions ask respondents to choose the information to be provided or recorded, and each respondent may choose to interpret the collection of information differently. Nonstandardized oral inquiries--i.e., inquiries that do not follow a plan used to obtain "identical" information from ten or more persons--are also not considered to be "identical." For example, a request for public comment on a published report would not be covered.

This issue also arises with electronic questionnaires. For example, agencies often attach customer feedback questionnaires to their World Wide Web sites. Any such electronic questionnaire which asks identical specific questions is subject to the PRA and requires OMB review and approval. On the other hand, an undifferentiated "suggestion box" format--such as one requesting "ideas, comments, suggestions, or anything else you would like to tell us," or one asking "if you experience any technical problems with our site, or have any suggestions for improving it, please let us know"--are not considered to be "identical questions." Such general solicitations of comments from the public do not require OMB clearance.[75]

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[74] 5 CFR 1320.3(c).

[75] Cf. 5 CFR 1320(h)(4).

3. "Person." In the PRA, the word "person" defines who it is that is to report, provide, disclose, or record the information, i.e., the respondent. The term "person" includes individuals (including government contractors),[76] partnerships, associations, corporations (including operations of government owned-contractor operated facilities), business trusts, legal representatives, organized group of individuals, and State, territory, tribal or local governments or branches or political subdivisions thereof.[77] As to particular categories of "person", OMB practice has been the following:

a. Current Federal Employees and Military Personnel. The PRA does or does not apply to current Federal employees and military personnel depending on the nature of the question asked.

The definition of "person" excludes current employees of the Federal Government, military personnel, military reservists, and members of the National Guard, with respect to all inquiries within the scope of their employment and for purposes of obtaining information about their duty status. That is, an agency does not need seek OMB review and approval to survey Federal employees in their professional capacities.

On the other hand, the definition of "person" includes current employees of the Federal Government and military personnel, if the collection of information is addressed to them in their capacity as individual private citizens (e.g., they file income tax returns, census forms, or other survey or administrative forms).[78]

b. Respondents' Employees. The definition of "person" includes employees of an entity to which a collection of information is addressed, even if the information they provide or compile is within the scope of their employment. Except where such an individual provides or compiles information on behalf of the entity, an individual identified as a respondent to the collection is separately counted as a "person" within the definition.

c. Retired Federal Employees and Military Personnel on Inactive Status. The definition of "person" includes retired and other former Federal civilian employees. The definition of "person" also includes retired and inactive military personnel, including reservists and members of the National Guard, unless they are being asked questions about their duty status..

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[76] 5 CFR 1320.3(c)(1), which includes "requests for proposal and other procurement requirements". For discussion of predecessor provision (5 CFR 1320.7(c)(1), as in effect after May 2, 1983), see 48 Fed. Reg.12675-76 (March 31, 1983).

Note that the "the [OMB] Director shall ... coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition and payment, and to reduce information collection burdens on the public" 44 U.S.C. 3504(c)(2).

[77] 44 U.S.C. 3502(10), 5 CFR 1320.3(k).

[78] 5 CFR 1320.3(c)(4).

4. "Ten or More Persons." The term "ten or more persons" refers to the persons to whom the collection of information is addressed within any 12 month period. It includes any separate person or entity from whom the initial addressee may reasonably be expected to seek information with which to respond to the collection of information.[79] Included within the count of "ten or more persons" are independent State, territorial, tribal or local government entities, separately incorporated subsidiaries or affiliates of the addressee, and individuals (other than in their capacity as employees) to whom the initial addressee may reasonably be expected to transmit the collection of information. In the context of disclosures to third-parties or the public, "persons" refers to those called upon to make the disclosure, not the third-parties or members of the public to whom the disclosure is made.

Contractors hired by a respondent to comply with the collection of information are excluded from the definition of "person", i.e., they are not counted as a "person" with respect to their work on that contract.[80] In addition, if the collection of information is directed at a corporate entity or other employer, and does not specify that information is to be collected from employees, but the entity collects the information from the employees anyway, then these individual employees are excluded from the count of 10 or more persons. On the other hand, if the agency specifies that information is to be collected from employees, those employees would be included in the count of 10 or more persons.

If a regulation contains a collection of information, it is to be reviewed and approved by OMB, even if the agency is able to provide evidence that nine or fewer persons are directly affected by the rule.[81] It may be that the regulation indirectly affects a much larger group beyond the respondents, who need either to comply with the rule, or read the regulation to determine if it applies to them or would apply to them if they engaged in a particular course of action. Only if the rule--by its own terms--applies to nine or fewer persons is it exempt.

Collections of information addressed to all or a substantial majority of an industry (e.g., the domestic automobile companies) in a 12 month period are presumed to be addressed to ten or more persons.[82] All such collections require OMB review and approval. Agencies may have evidence showing that this presumption is incorrect in a specific situation. In such a case, the agency may proceed with the collection without seeking OMB approval. Upon OMB request, however, the agency needs to provide that evidence to OMB and needs to abide by OMB's determination as to whether the collection of information requires OMB approval.[83]

5. "Disclosure to Third Parties or the Public." As used in the PRA, a "collection of information" includes "soliciting, or requiring the disclosure to third parties or the public, of facts or

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[79] 5 CFR 1320.3(c)(4).
[80] 5 CFR 1320.3(c)(4).
[81] 5 CFR 1320.3(c)(4)(i).
[82] 5 CFR 1320.3(d)(4)(ii).
[83] 5 CFR 1320.18(a).

opinions".[84] Disclosure includes "posting, notification, labeling, or similar disclosure requirements".[85] Disclosure may be entirely voluntary, may be required to obtain or retain a benefit, or may be mandatory (with civil or criminal sanctions imposed for failure to respond).[86]

Congress intended "disclosure to third parties or the public" to be read broadly:

> "Increasingly, Federal agencies are using third party disclosure requirements to meet program needs, instead of directly collecting, processing, and disseminating information itself. Third party disclosures include Federal requirements for labeling, self-certification, public recordkeeping, conveying information between third parties (such as pension data a Federal agency requires employers give their employees); and directly conveying information to State or local governments.
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> "Third party disclosure is increasing partly because agencies, with their own limited resources to collect and analyze information, have discovered that their program objectives may be met by requiring private parties to provide information directly to the intended beneficiary (e.g., an employee of the employer) or enforcer (e.g., the State or local government charged with regulatory enforcement), eliminating the Federal middle-man. In order to decrease the direct cost of Government services, agencies may also adopt third party disclosure in the form of self-certification and recordkeeping by private entities to replace extensive information collections.
>
> "In addition, the Federal Government has increased the use of third party disclosure by having private institutions and individuals report to State or local governments. States, for example, are often charged with the responsibility for implementing and enforcing Federal program requirements with extensive information collection. In such situations, a Federal agency may not actually receive the information as collected, but require the States to retain the reports from the public for possible Federal inspection or having States send the Federal agency only a summary of information reported to them."[87]

The only exceptions to definition of "disclosure" are requests or directives for a person to provide a label or otherwise disclose information completely supplied by the agency, such as the Surgeon General's warnings about cigarettes.[88]

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[84] 44 U.S.C. 3502(3)(A).

[85] 5 CFR 1320.3(c)(1) & (2).

[86] See 5 CFR 1320.8(b)(3)(iv).

[87] H. Rpt. No. 104-37 (February 15, 1995) 12-13.

[88] "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" the definition of "collection of information". 5 CFR 1320.3(c)(2).

6. "Recordkeeping Requirements." Reflecting the addition of "disclosure" to the definition of "collection of information," the PRA defines the term "recordkeeping requirement" extremely broadly to be:

> "... a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to--
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> "(A) retain such records;
>
> "(B) notify third parties, the Federal Government, or the public of the existence of such records;
>
> "(C) disclose such records to third parties, the Federal Government, or the public; or
>
> "(D) report to third parties, the Federal Government, or the public regarding such records".[89]

These requirements apply regardless of the medium in which respondents keep the records (for example, on paper or in electronic form).

7. "General Purpose Statistics." If the results of a collection of information from Federal agencies, instrumentalities, or employees are to be used for general statistical purposes[90]-- that is, "if the results are to be used for statistical compilations of general public interest, including compilations showing the status or implementation of Federal activities and programs"[91]--OMB reviews the collection for consistency with proper statistical methodology and related issues.

This policy was originally established by the Federal Reports Act of 1942[92] and was preserved with the same meaning in the PRA.[93] It is intended to ensure that statistics in reports published for the use of Congress or the public are prepared in conformance with the same standards of professional practice that are applied to data collections from the public.

8. Modifications to Collections of Information Previously Approved by OMB. An agency may not substantially or materially modify a collection of information previously approved by OMB without OMB approval of the modification.[94] A substantive or material modification is any revision to the collection of information that adds or deletes questions, changes the scope of

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[89] 44 U.S.C. 3502(13).

[90] 44 U.S.C. 3502(3)(A)(ii).

[91] 5 CFR 1320.3(c)(3).

[92] P.L. 77-831, 56 Stat. 1078.

[93] S. Rpt. 96-930, 96th Cong., 2d Sess. (September 8, 1980), at pp. 38-39.

[94] 44 U.S.C. 3507(h)(3). 5 CFR 1320.5(g): "An agency may not make a substantive or material modification to a collection of information after such collection of information has been approved by OMB, unless the modification has been submitted to OMB for review and approval under this Part."

inquiry or the population actually or potentially subject to inquiry, revises the method of collection or the procedure for sample selection, reinterprets compliance directives or other policy guidance, significantly changes the uses of the information or otherwise meaningfully alters any aspect of the collection of information from that previously approved by OMB. The "public protection" provisions of the PRA and the OMB regulations apply to all collections that have been modified without OMB approval.[95]

C. WHAT COLLECTIONS OF INFORMATION ARE EXEMPT?

The PRA[96] defines certain purposes for which collections of information are exempt from all requirements of the PRA.[97] If an agency is uncertain as to whether a particular collection of information is exempt, the agency should consult with OMB.[98]

The exempt collections are those conducted:

- By compulsory process pursuant to the Antitrust Civil Process Act or Section 13 of the Federal Trade Commission Improvements Act of 1980;
- During the conduct of intelligence activities,[99] or during the conduct of cryptanalytic activities that are communications securities activities; or
- During the conduct of a Federal criminal prosecution or investigation; a civil action; or an administrative action, investigation, or audit with respect to a specific party.

The exemption for collections of information conducted during these Federal criminal, civil, or administrative actions is a limited one. It applies only after a case file or its equivalent is opened with respect to a particular party. It does not apply prior to the opening of such file, and therefore does not apply to complaints or allegations of an individual(s) or other person(s) that form the basis for the agency's subsequent opening of a case file--even though the file is opened immediately upon receipt of the complaint or allegation.

The exemption applies after the file is opened and remains in effect throughout the investigation, hearing, litigation, and appeal(s) processes. The exemption ends when the conduct of the particular criminal, civil, or administrative action is over, i.e., when the adjudicator--the Federal

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[95] For a general discussion of the "public protection" provision, see Chapter III.

[96] 44 U.S.C. 3518(c); 5 CFR 1320.4.

[97] In some instances, the methods of collection, such as questionnaires and interview guides, may also be used for nonexempt purposes. These nonexempt purposes are subject to OMB review and approval, and any control numbers assigned to the method of collection apply only to the nonexempt purpose.

[98] 5 CFR 1320.18(a).

[99] The exempt intelligence activities are defined in Executive Order No. 12333, issued December 4, 1981, and successor orders.

judge, the administrative law judge, the agency inspector--issues an order or opinion, and all appeals or opportunity therefore are completed.

The exemption also applies during any subsequent adjudicative or judicial procedure utilized to determine fines or other penalties to be levied against the particular party concerning or against whom the order or opinion was issued. This would be, in effect, a separate investigation, namely, to determine what the fine or other penalty should be.

General investigations or audits[100] that are not focused on a particular party, e.g., those undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry are not exempt.[101] On the other hand, collections of information from some or all members of a category of individuals or entities are within the scope of the exemption--if the collection is made after a case file dealing with a particular party has been opened and the collection is designed to obtain information relative to the complaint or allegation, or to follow-up administrative or judicial proceedings.

D. WHAT ITEMS ARE GENERALLY CONSIDERED NOT TO BE INFORMATION?

OMB's regulation defines "information" to be "any statement or estimate of fact or opinion, regardless of form or format, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic or other media."[102]

OMB's regulation also defines ten categories of inquiry which generally are not deemed to constitute information.[103] These inquiries are considered "routine" and not burdensome to the respondent. Response to these requests rarely requires examination of records, and usually does not require much consideration to provide the correct answer.

The ten categories are:

1. "Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments."[104]

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[100] This includes "audits" that may be conducted by Chief Financial Officers or Inspectors General. See 60 Fed. Reg.44980 (August 29, 1995). For a more general discussion of collections of information by Inspectors General, and their need to obtain OMB approval for collections of information, see 60 Fed. Reg. 44982-83 (August 29, 1995).

[101] 44 U.S.C. 3518(c)(2); 5 CFR 1320.4(b).

[102] 5 CFR 1320.3(h).

[103] 5 CFR 1320.3(h)(1)-(10).

[104] 5 CFR 1320.3(h)(1).

This category is limited to those disclosures that require persons to provide only facts necessary to identify themselves, e.g., "they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument".[105]

This exemption for "certifications" is to be used only to identify an individual in a routine, non-intrusive, non-burdensome way. The exemption does not apply to a certification that substitutes for a collection of information--often in the form of a recordkeeping requirement--to collect and maintain evidence of or to monitor compliance with regulatory standards. As stated in OMB's regulation, "a certification would likely involve the collection of 'information' if an agency conducted or sponsored it as a substitute for a collection of information to collect evidence of, or to monitor, compliance with regulatory standards, because such a certification would generally entail burden in addition to that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument."[106]

Congress pointed out why Federal agencies may use a certification in this way: "In order to decrease the direct cost of Government services, agencies may also adopt third party disclosure in the form of self-certification and recordkeeping by private entities to replace extensive information collections."[107] Affidavits and other documents requesting or requiring respondents to provide information (such as, quantity, quality, location of products) about the matters certified to are also collections of information requiring OMB approval.

2. "Samples of products or of any other physical objects."[108]

This category includes requests for information that is already available in a form suitable for distribution and is provided in that form to all requesters. (The request is a collection of information if the information has to be compiled, or if it is not provided to any person who requests it.)

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 observation."[109]

This category includes all observations made by employees or agents of the conducting or sponsoring agency not involving the soliciting of any information from a person. The category also includes questions asked a person that are specific to that person, result from observation or response to an OMB approved collection of information, and that are not prescribed by the agency as questions to be asked in defined situations.

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[105] 5 CFR 1320.3(h)(1).
[106] 5 CFR 1320.3(h)(1).
[107] H. Rpt. No. 104-37, 104th Cong., 1st Sess., 12. See 44 U.S.C. 3502(13).
[108] 5 CFR 1320.3(h)(2).
[109] 5 CFR 1320.3(h)(3).

OMB review and approval are required for questions that are designed to be asked if preset criteria are met, such as for surveys that are "tailored" in ways permitting equivalent, nonidentical, follow-up questions to be asked of different respondents.

4. " Facts or opinions submitted in response to general solicitations of comments from the general public" provided that no respondent is required to supply specific information pertaining to the commenter, except as necessary for self-identification and a condition to the agency's full consideration of the comment.[110]

This includes all requests for public comment on proposed regulations published in the Federal Register or other publications, or any general request for comment, "regardless of the form or format thereof,"[111] even if the agency asks for specific comment about certain matters.

The category does not include requests addressed to specific persons.

5. Information from individuals (including those 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."[112]

This category is limited to the collection of information with respect to medical research and treatment, and is limited to collections of information by or on behalf of bona fide medical and scientific personnel.

This category does not include more general monitoring of health conditions through reports and electronic or other technological methods.[113] Nor does this category include disclosures that medical personnel make to patients or other third-parties or members of the public outside of a clinical examination or treatment setting.

6. Facts or opinions requested from a single person.[114]

Information requested of a single person is exempt from the requirement for OMB approval.

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[110] 5 CFR 1320.3(h)(4).

[111] 5 CFR 1320.3(h)(4).

[112] 5 CFR 1320.3(h)(5).

[113] Included within "collection of information" are "answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons". 44 U.S.C. 3502(3)(A).

[114] 5 CFR 1320.3(h)(6).

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."[115]

This category includes examinations and other tests given to one or more persons provided that the tests are designed to measure the knowledge, aptitude, skills, or abilities of the individual. This exclusion exists even though the tests may be standardized and given to ten or more persons during any 12 month period.

On the other hand, OMB approval is required for questions asked to obtain information about respondents' knowledge of the practices of another person or entity. Approval is also required for any survey instruments or other information collections associated with an examination, such as a survey of socioeconomic status that accompanies a reading test.

8. Facts or opinions solicited in connection with public hearings or meetings.[116]

This category includes questions addressed to a specific person or group of persons, or the general public, to indicate their intention to participate in a public hearing or meeting. Included in this category are questions which ask the proposed participants to identify themselves and the topic(s) about which they desire to speak. This category also includes all questions that may be asked at the hearing or meeting.

In general, the category does not include questions for which response is required under penalty of some sanction. OMB approval of such questions is generally required if they are addressed to ten or more persons, unless the questions are exempt by law.

9. Information solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information.[117]

This category includes questions asking respondents to verify or clarify their responses to a collection of information previously approved by OMB. These questions of verification or clarification need to be specific to the person's prior response and may not relate to new areas of inquiry nor pertain to matters not covered in the initial inquiry.

10. Like items designated by OMB.[118]

OMB has the authority to determine that a particular activity does not constitute a collection of information, provided that the activity is comparable to the nine items described above, and that

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[115] 5 CFR 1320.3(h)(7).
[116] 5 CFR 1320.3(h)(8).
[117] 5 CFR 1320.3(h)(9).
[118] 5 CFR 1320.3(h)(10).

the classification of the activity as not constituting a collection of information would not frustrate the purpose and intent of the Act.

For example, under this authority, OMB excepts references to other forms. Specifically, certain regulations do not designate the information to be collected, but request the completion of agency forms, specified by number and/or title. Such references in regulations to specific forms, even if the referenced forms are necessary to implement the regulation, do not require OMB review and approval. The forms themselves are reviewed and approved separately.

OMB reviews the referenced forms separately, in part because they are collections of information that may change over time. For example, the forms may consist of blank pages; or the forms may contain questions which may be modified with each subsequent OMB approval of the referenced form; or the forms may be disapproved in their entirety and discontinued by the agency.

On the other hand, a regulation that refers to specific forms often contains provisions calling for a collection of information--often more general statements of the provisions included in the specific forms. In such a case, the agency needs to submit both the regulation and the specific forms for OMB review and approval under the PRA.

CHAPTER III. HOW IS THE PUBLIC PROTECTED BY THE PRA?

This chapter describes the "public protection" provisions of the PRA.

The "public protection" provision requires each agency to display a currently valid OMB control number and inform respondents that a response is not required unless the collection of information displays a valid OMB control number on each collection of information.[119] It applies to all collections of information, including those previously approved by OMB that the agency then substantially or materially modifies without OMB approval.[120]

This "public protection" provision has two legal effects--first, it creates a legal responsibility for the agency; second, it provides an affirmative legal defense for respondents. The legislative history describes these two legal effects clearly--

> " [I]t is the intent of Congress that [the public protection provision] requires agency information collection requests applicable to 10 or more members of the public to be submitted to OMB and receive a valid control number. If not, the public need not respond, nor may it be subjected to any penalty for failing to comply with such an unenforceable collection of information."[121]

> "Since 1980, the [PRA] has provided a fundamental protection to every citizen that he or she need not comply with, or respond to, a collection of information if such collection does not display a valid control number given by OMB as evidence that the collection was reviewed and approved by OIRA. And if the collection does not display a valid control number, the agency may not impose any penalty on the citizen who fails to comply or respond."[122]

The "public protection" provision in the PRA states that:

> "(a) **[2] Notwithstanding any other provision of law, [1] no person shall be subject to any [3] penalty** for failing to comply with a collection of information that is subject to [the PRA] if--
>
> "(1) the collection of information does not **[4] display** a valid control number ... ; or

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[119] 44 U.S.C. 3512; 5 CFR 1320.5(b); 5 CFR 1320.6(a) & (b); 5 CFR 1320.10(d); 5 CFR 1320.11(l); 5 CFR 1320.12(e)(3).

[120] For discussion, see Chapter II.B.8.

[121] Floor remarks of Congressman Bill Clinger, floor manager (141 Cong. Rec. H 4376 (April 6, 1995)).

[122] Floor remarks of Senator William V. Roth, Jr., floor manager (141 Cong. Rec. S 5274 (April 6, 1995)). For a discussion of the scope of this provision, see United States v. Matsumoto, 756 F. Supp. 1361, 1364 (D. Haw. 1991); S. Rep. No. 938, 96th Cong., 2d Sess. 52, reprinted in 1980 U.S. Code Cong. & Admin. News 6241, 6292; S. Rep. No. 104-8, 104th Cong., 1st Sess., 55; H. Rep. No. 104-37, 104th Cong., 1st Sess., 53-54; and H. Rep. No. 104-99, 104th Cong., 1st Sess., 36-37.

"(2) the agency fails to **[5] inform** the [respondent] that such person is not required to respond to the collection of information unless it displays a valid control number.

"(b) The protection provided by this [provision] may be raised in the form of a complete defense, bar, or otherwise **[6] at any time** during the agency administrative process or judicial action applicable thereto."[123]

The provisions in **boldface** are discussed below.

1. "No person shall be subject to any penalty." The "public protection" provision does more than establish a legal responsibility for the agency to display a valid control number and inform the respondents of its legal effect. It provides the public with an affirmative legal defense.[124]

The agency's responsibility arises from its obligation to comply with the PRA and OMB's implementing regulations.[125] Accordingly, an agency is obligated to display valid OMB control numbers[126] and inform respondents that without such display, respondents are not required to respond.[127]

The affirmative legal defense arises from the "public protection" provision itself--"No person shall be subject to any penalty... . The protection provided by this [provision] may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative

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[123] 44 U.S.C. 3512; 5 CFR 1320.6. Cf. 5 CFR 1320.5, 48 Fed Reg. 13690 (March 31, 1983), and the related discussion in the preamble, 48 Fed. Reg. 13671-72 (March 31, 1983), and 5 CFR 1320.5, 47 Fed. Reg. 39525 (September 8, 1982), and the related discussion in the preamble, 47 Fed. Reg. 39518-19 (September 8, 1982).

[124] "The conference agreement makes explicit that the protection afforded by the [PRA] may be asserted or raised in the form of a complete defense at any time if the agency should seek to enforce compliance with the unapproved collection of information or impose a penalty through administrative or judicial action." Floor remarks of Senator Sam Nunn, 141 Cong. Rec. S 5399 (April 6, 1995).

[125] See, e.g., 44 U.S.C. 3506(a).

[126] The PRA is very specific concerning these legal obligations. First, "[a]n agency shall not conduct or sponsor the collection of information unless ... the agency has obtained from the [OMB] Director a control number to be displayed upon the collection of information." 44 U.S.C. 3507(a) & (a)(3); 5 CFR 1320.5(a)(3); 5 CFR 1320.10(b); 5 CFR 1320.11(g) & (i); 5 CFR 1320.12(e)(1) & (2). Second, there is the "public protection" provision, itself. 44 U.S.C. 3512; 5 CFR 1320.6. Third, the PRA obligates the agency to so inform the respondent, namely, of "the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number" 44 U.S.C. 3506(c)(1)(B)(iii)(V); 5 CFR 1320.8(b)(3)(vi). Fourth, the agency is to certify that it has so informed respondents. 44 U.S.C. 3506(c)(3)(G); 5 CFR 1320.9(g).

[127] As the Ninth Circuit Court of Appeals has explained, with respect to tax returns and regulations implementing that statutory requirement that a person file a tax return, "[t]he IRS, like any federal agency, must comply with the PRA and, in particular, must display OMB control numbers on its tax return forms and on its regulations." United States v. Hicks, 947 F.2d 1356, 1359 (9th Cir. 1991), citing Dole v. Steelworkers, 494 U.S. 26, 33 (1990). The need for agencies to inform respondents of the legal effect of failing to display a valid OMB control number, i.e., the availability of an affirmative legal defense, is new to the Paperwork Reduction Act of 1995. For the rationale supporting this new provision, see Floor remarks of Senator William V. Roth, Jr., floor manager (141 Cong. Rec. S 5274-75 (April 6, 1995)).

process or judicial action applicable thereto."[128] Moreover, the protection against penalties provided by the "public protection" provision is to be interpreted broadly, i.e., "[w]henever 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 administrative or judicial process." [129]

This affirmative defense permits the respondent to protect him or herself--it is not a defense to be invoked by the agency. If, to receive a benefit from an agency or to avoid a penalty, a respondent wishes voluntarily to provide information, the respondent is at liberty to do so. An agency can not use its own failure to comply with the "public protection" provision of the PRA as a basis to refuse to accept the information.[130] Even if the would-be respondent refuses to comply with a collection of information for which the agency failed to display a valid control number and inform the respondents of its legal effect, the agency is instead to permit respondents "to prove or satisfy" the legal conditions underlying the agency's collection of information "in any other reasonable manner."[131]

This basic principle also applies if OMB disapproves an agency's collection of information. An OMB disapproval has legal effect.[132] But that does not mean that an agency can use that

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[128] 44 U.S.C. 3512(a) & (b).

[129] 5 CFR 1320.6(d).

[130] "In order to strengthen and underscore congressional desire to protect the public, the conferees included a definition of penalty ... to make clear that the term not only applies to the payment of a fine but also to the denial of a benefit. What this means is that if an agency does not comply with [the PRA], it is in serious trouble. If an agency does not act on a citizen's request for a Government benefit because the citizen did not complete a form that fails to display a valid OMB clearance number, it is the agency--not the citizen--that stands in violation of the law. Once this is determined, the agency would not only owe the citizen the benefits due but also perhaps interest as well." Floor remarks of Senator William V. Roth, Jr., floor manager (141 Cong. Rec. S 5274 (April 6, 1995)).

[131] "Whenever an agency has imposed a collection of information as a means for proving or satisfying a condition for the receipt of a benefit or the avoidance of a penalty, and the collection of information does not display a currently valid OMB control number or inform the potential persons who are to respond to the collection of information, ... 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." 5 CFR 1320.6(c).

[132] Action Alliance v. Senior Citizens v. Bowen, CA No. 83-0285 (D.C.D.C., filed May 26, 1987), slip op. 5-6 ("OMB acted within its power under the Federal Reports Act [of 1942, the predecessor to the PRA] to disapprove the self-evaluation provision of the government-wide regulation. As a result, the self-evaluation provision of the government-wide regulation was rendered unenforceable."), aff'd 846 F.2d 1449 (D.C. Cir. 1988), vacated on other grounds, 494 U.S. 1001 (1990), on remand, 930 F.2d 77 (D.C. Cir.), (adopting reasoning from prior D.C. Circuit decision), cert. denied, 112 S. Ct. 371 (1991).

"To the extent, if any, that the [OMB] Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information." 44 U.S.C. 3508. Compare "[t]o the extent, if any, that the [OMB] Director determines the collection of such information by such agency is unnecessary, either because it is not needed for the proper performance of the functions of such agency or because it can be obtained from another Federal agency or for any other reason, such agency shall not thereafter engage in the collection of such information." Section 3(d) of the "Federal Reports Act of 1942,", P.L. 77-831, 56

(continued...)

disapproval to disadvantage a respondent seeking a benefit.[133] This basic principle similarly applies if OMB instructs an agency to make a substantive or material change to a collection of information.[134]

2. "Notwithstanding any other provision of law." The "public protection" provision provides an affirmative legal defense for respondents if the collection of information involved is imposed on respondents by the agency through regulation or administrative means in order to satisfy some legal authority or responsibility of the agency.[135] As the preamble to OMB's implementing regulation states: "an agency's failure to comply with the requirements that Congress imposes on the agency in one statute (in this case, the Paperwork Reduction Act) can preclude the Government from enforcing a requirement that the agency has imposed on persons, including when the agency has imposed the requirement in order to comply with a statutory obligation that Congress imposed on the agency in another statute."[136]

On the other hand, the "public protection" provision does not provide an affirmative legal defense for a collection of information that is imposed on the public by a statute itself--i.e., if the question itself is in a statute, then an agency's failure to comply with the PRA does not nullify the public's obligation to comply with the statute containing the question.[137]

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[132](...continued)
Stat. 1079.

[133] "If OMB disapproves the whole of such a collection of information ..., the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition." 5 CFR 1320.6(c)(1).

[134] "If OMB instructs an agency to make a substantive or material change to such a collection of information ..., the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so changed." 5 CFR 1320.6(c)(2). Cf. 5 CFR 1320.5(c)(1) & (2), 48 Fed. Reg. 12690 (March 31, 1983), and the related discussion in the preamble, 48 Fed. Reg 13671-72 (March 31, 1983).

[135] See United States v. Hatch, 919 F.2d 1394 (9th Cir. 1990); United States v. Smith, 866 F.2d 1092 (9th Cir. 1989). In Hatch and Smith, the Ninth Circuit held that the PRA's public protection provision precluded persons from being penalized for failing to file an operating plan pursuant to Forest Service regulations, because those regulations did not display a current control number. The court reached this result, notwithstanding that the agency promulgated the regulations pursuant to statutory authority, and the government was seeking to impose statutory penalties. See 16 U.S.C. 551.

[136] 60 Fed. Reg. 44981-82 (August 29, 1995). See 44 U.S.C. 3518(a) ("Except as otherwise provided in [the PRA], the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the [OMB] Director under [the PRA].").

[137] "The protection provided by [the "public protection" provision] does not preclude the imposition of a penalty on a person for failing to comply with a collection of information that is imposed on the person by statute--e.g., 26 U.S.C. § 6011(a) (statutory requirement for person to file a tax return), 42 U.S.C. § 6938(c) (statutory requirement for person to provide notification before exporting hazardous waste)." 5 CFR 1320.6(e); see discussion, 60 Fed. Reg. 44980-82 (August 29, 1995), e.g., at 44981: "[A]n agency's failure to comply with the [PRA] cannot preclude the enforcement of a statute that imposes paperwork requirements on persons. Otherwise, agency officials, by failing to satisfy their statutory obligations, would have the power to nullify a requirement that Congress imposes on persons by statute." See United States v. Wunder, 919 F.2d 34, 38 (6th Cir. 1990) ("The Paperwork Reduction Act, therefore, does not apply to the statutory requirement, but only to the forms themselves, which contained the (continued...)

"Where an agency fails to follow the PRA in regard to an information collection request that the agency promulgates via regulation, at its own discretion, and without express prior mandate from Congress, a citizen may indeed escape penalties for failing to comply with the agency's request.[138] ... But where Congress sets forth an explicit statutory requirement that the citizen provide information, and provides statutory criminal penalties for failure to comply with the request, that is another matter. This is a legislative command, not an administrative request."[139]

3. "Penalty." "Penalty" includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.[140] While the definition of "penalty" is new to the PRA in 1995,[141] it was copied from the then-existing OMB rule.[142]

4. "Display."Each agency is to "display" a valid OMB control number in specific ways. Failure to do so permits a respondent to raise the affirmative legal defense provided by the "public protection" provision. These numbers are to be displayed --

-- On forms, questionnaires, instructions and other written documents individually provided to respondents for completion (other than in an electronic format), by printing the number in the front page of the document;[143]

-- On forms, questionnaires, instructions, and other written collections of information sent or made available to respondents in an electronic format, by placing the number near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent;[144]

-- In regulations, guidelines or other issuances published in the Federal Register, by publishing the number in the Federal Register (for example, in the preamble or regulatory text for the final rule containing the information collection, in a technical amendment to the

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[137](...continued)
appropriate numbers.").

[138] Citing the Hatch and Smith cases, supra.

[139] United States v. Hicks, 947 F.2d 1356, 1359 (9th Cir. 1991). See Salberg v. United States, 969 F.2d 379 at 384 (7th Cir. 1992); United States v. Neff, 954 F.2d 698 at 700 (11th Cir. 1992); United States v. Dawes, 951 F.2d 1189 at 1192 (10th Cir. 1991); United States v. Wunder, 919 F.2d 34 at 38 (6th Cir. 1990). As OMB stated in the preamble to the implementing regulation, "Congress did not subject its law-making process to the requirements of the Paperwork Reduction Act." 60 Fed. Reg. 44981 (August 29, 1995).

[140] 44 U.S.C. 3502(14); 5 CFR 1320.3(j).

[141] "[T]he conferees included a definition of penalty at the end of section 3502 [of title 44, United States Code] to make clear that the term not only applies to the payment of a fine but also the denial of a benefit." Floor remarks of Senator William V. Roth, Jr., floor manager (141 Cong. Rec. S 5274 (April 6, 1995)).

[142] 5 CFR 1320.7(m), 90 Fed. Reg. 16626 (May 10, 1988). See H. Rep. 104-99, 104th Cong. 1st Sess. 37.

[143] 5 CFR 1320.3(f)(1).

[144] 5 CFR 1320.3(f)(2).

final rule, or in a separate notice announcing OMB approval of the collection of information);[145] and

-- In other cases--e.g., collections conducted by personal or telephone interviews and where OMB determines in advance that in writing that special circumstances exist--by using other means for informing respondents of the OMB control number.[146] For interviews, other means may include telling respondents the required information in person or by phone, with hard copy documentation available at the respondent's request.

5. "Inform." An agency is to "inform" the respondent that the respondent is not required to respond to the collection of information unless it displays a valid control number. Failure to do so permits a respondent to raise the affirmative legal defense provided by the "public protection" provision.

It is important to note that, while each agency is to "display" a valid control number, it only has to "inform" the respondent of the legal consequences of failing to display one. The word, "inform," was deliberately selected to be more flexible than the word "display."[147] Each agency is to provide the information concerning the legal consequences of failing to display a number "in a manner reasonably calculated to inform the public."[148] For example, while an agency normally displays the OMB control number on the face or front page of a questionnaire, the agency may inform the public of its legal consequence in the instructions accompanying the questionnaire.[149]

6. "At any time." The "public protection" provision provides an affirmative legal defense that may be raised by the respondent "at any time" during an agency administrative process in which a penalty may be imposed for failing to comply with a collection of information or any judicial action applicable thereto.[150]

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[145] "In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of the currently valid control number in the Code of Federal Regulations constitutes an alternative means of 'display.' In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease of future reference that, even where an agency has already 'displayed' the OMB control number by publishing it in the Federal Register as a separate notice or in the preamble for the final rule (rather than in the regulatory text for the final rule or in a technical amendment to the final rule), the agency also place the currently valid control number in a table or codified section to be included in the Code of Federal Regulations. For placement of OMB control numbers in the Code of Federal Regulations, see 1 CFR 21.35." 5 CFR 1320.3(f)(3).

[146] 5 CFR 1320.3(f)(4).

[147] "While the conferees provided some flexibility regarding [the provision that uses the word "inform"], it is their intention that the agency inform those who are to respond in a manner reasonably calculated to bring the matter to their attention." Floor remarks of Senator William V. Roth, Jr., floor manager (141 Cong. Rec. S 5275 (April 6, 1995)).

[148] 5 CFR 1320.5(b)(ii). Cf. 5 CFR 1320.8(c)(2). See, H. Rep. 104-99, 104th Cong. 1st Sess., p. 37.

[149] For example, compare 5 CFR 1320.5(b)(2)(ii)(A) with 5 CFR 1320.3(f)(1).

[150] 44 U.S.C. 3512(b); 5 CFR 1320.6(b). "As of October 1, 1995, the defense provided in section 3512 is

(continued...)

CHAPTER IV. CRITERIA FOR OMB APPROVAL

This chapter describes the substantive standards and policy criteria OMB uses to decide whether to approve a proposed information collection. This chapter will help the agency refine its internal paperwork procedures, design its information collections, and prepare its submissions.

Before OMB will consider any submission, the agency must follow the procedures described in Chapters V, VI, and VII. These procedures include an agency certification that the information collection meets the policy standards of the PRA. At a minimum, the agency is to demonstrate that the collection of information--

- minimizes the burden on respondents and the cost of the collection to the agency,
- serves an agency purpose,
- meets a specific agency need,
- maximizes practical utility, and
- not unnecessarily duplicates available information.

This chapter defines these requirements and explains their use in OMB's regulations, the OMB Form 83-I, and the instructions for preparing a supporting statement.

During the OMB review period, OMB uses the OMB Form 83-I and Supporting Statement to evaluate the information collection. This documentation demonstrates an agency's consideration of the policy criteria of the PRA and serves as the justification for OMB approval. OMB may disapprove an agency's proposed information collection if the agency does not submit the necessary documentation or is not able to demonstrate that the collection meets the criteria of the PRA.

A. WHAT ARE THE CRITERIA?

This section states the substantive policies that OMB relies upon in deciding to approve or disapprove a collection of information. The next section explains the terms in **boldface** further.

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[150](...continued)
available at any time in an ongoing dispute." Floor remarks of Congressman Bill Clinger, floor manager (141 Cong. Rec. H 4376 (April 6, 1995)). See Portland Cellular Partnership v. Northeast Cellular Telephone Company, L.P., Federal Communications Commission Order, File No. 27414-CL-P-152-B-86, File No. 27488-CL-P-B-86, November 18, 1996 (FCC 96-449), pp. 5-9.

The PRA directs OMB to "minimize the Federal information collection **[5, 6, 7] burden**, with particular emphasis on those individuals and entities most adversely affected" and "maximize the **[3] practical utility** of and public benefit from information collected by or for the Federal Government".[151]

> "Before approving a proposed collection of information, the [OMB] Director shall determine whether the collection of information by the agency is **[2] necessary for the proper performance of the [1] functions of the agency**, including whether the information shall have **[3] practical utility**."[152]

The PRA defines some of these terms further.

1. Under the PRA, "the term **[5, 6, 7] 'burden'** means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for--

> "(A) reviewing instructions;
>
> "(B) acquiring, installing, and utilizing technology and systems;
>
> "(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;
>
> "(D) searching data sources;
>
> "(E) completing and reviewing the collection of information; and
>
> "(F) transmitting, or otherwise disclosing the information".[153]

OMB's regulation limits this definition of "burden" in two ways--

> First, "the time, effort, 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

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[151] 44 U.S.C. 3504(c)(3)-(4).

[152] 44 U.S.C. 3508. Compare "the [OMB] Director is authorized within his discretion to make a determination as to whether or not the collection of information by any Federal agency is necessary for the proper performance of the functions of such agency or for any other purpose." Section 3(d) of the "Federal Reports Act of 1942,", P.L. 77-831, 56 Stat. 1078.

[153] 44 U.S.C. 3502(2).

demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are **[8] usual and customary**."[154]

Second, a "collection of information conducted or sponsored by a Federal agency that is also conducted or sponsored by a unit of **[9] State, local, or tribal government** is presumed to impose a Federal burden except to the extent that the agency shows that such State, local, or tribal requirement would be imposed even in the absence of a Federal requirement."[155]

2. Under the PRA, "the term **[3] 'practical utility'** means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion".[156]

OMB's regulation explains--

"*Practical utility* means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) 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 make it available to third-parties or the public, either directly or by means of a third-party or public posting, notification, labeling, or similar disclosure requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction."[157]

B. HOW DOES OMB USE AND INTERPRET THESE CRITERIA?

OMB uses the Supporting Statement accompanying the request for approval to determine whether the proposed collection of information meets these criteria, and thus, is approved. OMB may also use any other relevant information, including public comments and information in the public record. If OMB believes that more information is needed to demonstrate that the criteria have been met, the agency will need to provide the requested information.[158]

To meet these criteria, as they have been implemented, a collection of information needs to serve an agency **[1] purpose**,[159] meet a specific **[2] need**,[160] have **[3] practical utility**, and **[4] not**

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[154] 5 CFR 1320.3(b)(2).
[155] 5 CFR 1320.3(b)(3).
[156] 44 U.S.C. 3502(11).
[157] 5 CFR 1320.3(l).
[158] 5 CFR 1320.5(a)(1)(iii)(G).
[159] "Purpose" has been used as an administrative equivalent to the reference to "functions of the agency" as used

(continued...)

unnecessarily duplicate available information.[161] In addition, each agency needs to minimize the **[10] cost of the collection to the agency**[162] and the **[5, 6, 7] burden** on respondents. In effect, the benefit of the collection of information needs to outweigh its cost.

The terms in **boldface** are discussed below.

1. Purpose. The term "purpose" means that the collection of information will, or is expected to, achieve a result within the statutory, programmatic or policy requirements of the sponsoring agency, and will be used on a timely basis. The purpose often suggests the general benefit to be served by the collection of information. Proposed information collections that do not have a purpose, as defined, will be disapproved by OMB.

A collection of information may have more than one purpose. The sponsoring agency should carefully describe each purpose in its Supporting Statement accompanying the OMB Form 83-I.

Collections of information such as statistical surveys, which often aim to generally improve subject-matter knowledge rather than to fulfill a specific program or policy objective, do not have "purpose" within the meaning of the PRA and OMB regulation, unless the agency has a plan to use the information for program or policy development purposes (the agency is still expected to describe in its Supporting Statement the extent to which it will use, or make available for use, statistical information). General statistical surveys without specific program or policy objectives have an approvable purpose if the agency has a statutory, general-purpose statistical mandate, and if the survey is within the agency's statutory purview and has practical utility.[163]

2. Need. The term "need" means that some programmatic or policy requirement (as opposed to a desire for information or third-party disclosure) exists. A collection of information may meet the purpose criterion but fail the criterion for need because the results of the study will not help program operation or policy development. Collections of general purpose statistics are presumed

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[159](...continued)
in 44 U.S.C. 3508 because "purpose" is the way an agency tends to describe an activity that serves to advance a "function of the agency." See, e.g, OMB's Information Collection Review Handbook, issued January 1989, at pp. 45-47.

[160] "Need" has been used as the administrative equivalent to stating that the collection of information "is necessary for the proper performance" of the functions of the agency. 44 U.S.C. 3508. "If the [OMB] Director determines that a collection is not necessary, he should not approve it." H. Rpt. 96-835, 96th Cong., 2d Sess. (March 19, 1980) at 29. "Necessity is thus the test under this section." S. Rpt 96-930, 96th Cong., 2d Sess. (September 8, 1980) at 49. See, e.g., OMB's Information Collection Review Handbook, issued January 1989, at pp. 45-47.

[161] See 44 U.S.C. 3506(c)(3)(B). An agency is to include as part of its clearance package submitted for OMB review a certification stating, e.g., that the "collection of information submitted to [OMB] for review ... is not unnecessarily duplicative of information otherwise reasonably accessible to the agency" 44 U.S.C. 3506(c)(3)(B).

[162] See 44 U.S.C. 3501(5).

[163] "In the case of recordkeeping requirements or general purpose statistics (see [5 CFR] § 1320.3(c)(3)), 'practical utility' means that actual uses can be demonstrated." 5 CFR 1320.3(l).

to be needed if they are within the area of responsibility and statutory mandate of the sponsoring agency.

Collections specifically mandated by statute, court order, or agency regulation raise special issues. OMB will deem a collection of information specifically mandated by statute, court order, or certain agency regulations as needed, but OMB "will independently assess any collection of information to the extent that the agency exercises discretion in its implementation" or "deviates from the specifications in the rule."[164]

3. Practical Utility. The term "practical utility" refers to the usefulness of information (considering its accuracy, adequacy, and reliability) to carry out the agency's functions in a timely manner. A collection of information may meet the purpose and need criteria, but fail the criterion for practical utility because the agency using the information (or the third-party to whom it is disclosed) is not able to use the information obtained (or to receive, understand, process, and make use of the information disclosed) in a timely and useful fashion in a reasonable, practical, workable, and reliable way.

For example, a collection of information does not have practical utility if it seeks to collect information not necessary for the proper performance of the agency's function, cannot achieve or timely serve the purpose and need for which it is to be conducted, or if the design of and/or method by which the collection is to be conducted will not achieve results appropriate for the purpose of and need for the collection. Included in this category are collections that the agency cannot (or is not likely to devote the resources necessary to) process and analyze within the time frame necessary to satisfy the purpose and need for which the collection was conducted; and collections that can reasonably be expected to yield ambiguous and/or nongeneralizable results because of ambiguous survey questions, unduly biased methodology or statistical frames, disclosure of information by methods that are ineffective or unnecessarily onerous.

Collections also lack practical utility if the agency cannot actually use the information obtained. For example, when the agency does not have a plan for the timely processing, use, or submission to other agencies, or when the information would not be collected or processed in a way that makes it usable to other Federal agencies with a need for the information, the collection of information may be disapproved.

In effect, lack of practical utility to the agency or the person to whom it is disclosed suggests the purported benefit will not be accomplished in whole or in part by that collection of information. OMB needs to instruct the agency to make a substantive or material change to, or disapprove proposed collections of, information that do not have practical utility. OMB may also instruct the agency to make a change to proposed information collections that do not maximize practical

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[164] 5 CFR 1320.5(e)(1)-(2). The collections of information contained in a proposed or final agency rule or regulation will only be given such deference if OMB has already granted PRA approval for the collections of information in the proposed or final rule.

utility.[165] For example, in surveys with a high sample variance, an instruction to redraw the sample to reduce that variance can produce more precise and thus more useful data; an instruction to revise how a control group is selected for an evaluation can make analytical comparisons more meaningful; or an instruction to clarify question structure can improve the reliability of responses.

4. Unnecessary Duplication. The term "unnecessary duplication" means that information similar to or corresponding to information that could serve the agency's purpose and need is already accessible to the agency.[166] For example, unnecessary duplication exists if the need for the proposed collection can be served by information already collected for another purpose--such as administrative records, other federal agencies and programs, or other public and private sources.

If specific information is needed for identification, classification, or categorization of respondents; or analysis in conjunction with other data elements provided by the respondent, and is not otherwise available in the detail necessary to satisfy the purpose and need for which the collection is undertaken; and if the information is considered essential to the purpose and need of the collection, and/or to the collection methodology or analysis of results, then the information is generally deemed to be necessary, and therefore not duplicative within the meaning of the PRA and OMB regulation.

5. Burden. The term "burden" means the value of time, effort and financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency.[167] This includes reviewing instructions; developing, acquiring, installing and utilizing technology and systems for any of these purposes; training personnel; searching data sources; collecting data; completing and reviewing information collections; and transmitting or otherwise disclosing information.[168] "Burden" covers the time and other resources expended to fulfill specific one-time information requests as well as recurring information requests, including to obtain data and develop, procure and operate information systems necessary or desirable to retain such data in fulfillment of statutory or regulatory requirements, whether or not they are applicable only to the period of a specific information collection request.

a. Types of activities that constitute burden. The PRA and OMB's implementing regulation describe a range of activities which, when performed as a result of a collection of information, constitute burden.[169]

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[165] The PRA, at 44 U.S.C. 3504(c)(4), instructs the OMB Director to "maximize the practical utility of and public benefit from information collected by or for the Federal Government."

[166] 5 CFR 1320.5(d)(1)(ii).

[167] The PRA specifically directs OMB to "establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information." 44 U.S.C. 3504(c)(5).

[168] 5 CFR 1320.3(b)(1).

[169] "The term 'burden' is expanded with a more detailed list of descriptive examples of actions that constitute burden imposed by a collection of information .... No substantive limitation from current law is intended by the use of these examples." S. Rpt. 104-8, 104th Cong., 1st Sess. 35-36; H. Rpt. 104-37, 104th Cong., 1st Sess. 35.

(1) "Reviewing instructions"[170] includes all efforts performed by or for the respondent to determine whether and to what extent the respondent is covered by an agency collection of information, understand the nature of this request, and determine the appropriate response. All time, effort and other resources which need to be expended to learn that one is covered represent paperwork burden. This burden may be small or trivial in some cases, such as where respondents already know that they are covered based on prior experience or knowledge, and substantial in others, such as when respondents lack such prior experience or knowledge. Any collection of information that expands the number of respondents or the amount of information requested from persons already covered entails burdens from reviewing instructions which need to be accounted for in an agency's collection of information.

In addition, all time, effort and other resources which need to be expended to understand precisely what information an agency seeks, the agency's statutory or regulatory basis for seeking this information, and the range of alternative responses available represent paperwork burden. This includes reading and understanding forms and instructions, obtaining legal and other specialized advice concerning the agency's authority to collect this information (including advice concerning relevant provisions of the PRA) and obtaining legal and other specialized advice concerning whether (and if so, how) the person should respond. Again, this burden may be small or trivial in those cases where respondents have prior experience and knowledge with respect to the information collection in question, or substantial where such experience and knowledge is lacking.

(2) "Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information"[171] means the design, procurement and operation of data *collection* systems necessitated by a collection of information. These include monitors, detection systems, control systems and other equipment necessary to obtain the information or data of interest, as well as all facilities, structures and equipment necessary to house and operate such systems. For example, the burden of a collection of information that seeks environmental data includes both the burden of designing, installing and operating monitoring wells or devices and the burden of the time and effort for collecting, validating and verifying these data. Where a collection of information fulfills a regulatory requirement that is not expected to expire before the expiration date of the collection of information (e.g., three years), and it is cost-effective for respondents to invest in systems whose useful lifetime exceeds such shorter period, burden needs to be estimated based on the cost of such a longer-lived investment.

(3) "Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information"[172] means the design, procurement and operation of data *management* systems necessitated by a collection of information. These include computers

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[170] 5 CFR 1320.3(b)(1)(i); 44 U.S.C. 3502(2)(A).

[171] 5 CFR 1320.3(b)(1)(ii); see 44 U.S.C. 3502(2)(B).

[172] 5 CFR 1320.3(b)(1)(iii); see 44 U.S.C. 3502(2)(B).

and other hardware, programs and other software, and storage media and facilities, as well as all facilities, structures and equipment necessary to house and operate such systems. For example, the burden of collection of information that seeks extended retention and ready access to historical data includes the burden of designing, installing and operating computers and software that permit extended storage and ready access. This also covers the time, effort and burden for any equipment and facilities necessary to acquire, manage and maintain any non-electronic and non-computerized records. Where a collection of information fulfills a regulatory requirement that is not expected to expire before the expiration date of the collection of information (e.g., three years), and it is cost-effective for respondents to invest in systems whose useful lifetime exceeds such shorter period, burden needs to be estimated based on the cost of such a longer-lived investment.

(4) "Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information"[173] means the design, procurement and operation of data *reporting* systems necessitated by a collection of information. This includes electronic links, software and other components of electronic publishing as well as their conventional publishing analogues. It also includes the design, procurement and operation of systems, whether electronic or paper, intended to permit or extend access to information disclosed or provided pursuant to a collection of information. For example, the burden of a collection of information that seeks to permit broad public access includes both the burden of designing, installing and operating the reporting components of an information management system and the burden of maximizing public accessibility. Where a collection of information fulfills a regulatory requirement that is not expected to expire before the expiration date of the collection of information (e.g., three years), and it is cost-effective for respondents to invest in systems whose useful lifetime exceeds such shorter period. burden needs to be estimated based on the cost of such a longer-lived investment.

(5) "Adjusting the existing ways to comply with any previously applicable instructions or requirements"[174] means responding to changes in the requirements of an existing collection of information where such a request requires different or more detailed information. redefines terms or concepts, or alters in any way the consequences of responding in the same manner as before. For example, a collection of information that seeks the same information as previously provided but with greater precision, detail or accuracy entails new burden equal to the incremental burden of modifying the respondent's existing system in order to meet these revised requirements. plus any unrecoverable sunk costs associated with satisfying elements of the previously existing collection of information that are no longer required. Similarly, a collection of information in which instructions have been altered or revised or changes have been made in the definitions of key terms or concepts entails new burden equal to incremental burden of modifying the respondent's existing system to comport with these changes, plus unrecoverable sunk costs. As a final example, a collection of information that changes only explicit or implicit penalties (such as

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[173] 5 CFR 1320.3(b)(1)(iv); see 44 U.S.C. 3502(2)(B).

[174] 5 CFR 1320.3(b)(1)(v); 44 U.S.C. 3502(2)(C).

by making a voluntary information collection mandatory, utilizing selected information to trigger intensified inspection or scrutiny of other aspects of the respondent's affairs, or any other change in the legal consequences of continuing to respond in the same manner as before) entails new burden which needs to be estimated in accordance with established procedures.

(6) "Training personnel to be able to respond to a collection of information"[175] means transmitting to all subordinates, agents and contractors the information they need to fully understand their responsibilities with respect to the collection of information, including any private or legal penalties for non- or incomplete compliance. This includes the burden of converting the respondent's understanding of its obligations into functional tasks to be performed by others, whether they are employees, agents or outside contractors. Estimates of the burden of training personnel need to take account of the expected frequency with which training is needed for personnel to effectively perform their assigned functions, plus the burden of training new personnel based on expected turnover rates and, where appropriate, training existing personnel in concert with such new personnel.

All time, effort and other resources which need to be expended to translate the agency's collection of information, subsequent to understanding its nature, into tasks to be completed in accordance with a plan or other structured approach represent paperwork burden. This may include the development, design and coordination of work orders for employees to perform specified tasks, or contracts or other agreements for outside parties to perform such tasks where the respondent believes that outside contracting is cost-effective. This burden may be small or trivial where respondents have work orders, standard operating procedures, or outside contractual relationships based on prior experience with respect to the collection of information in question, or substantial where such experience is lacking. Any collection of information that expands the domain of respondents or the range of information requested from persons who already know themselves to be covered entails burdens of this form which needs be accounted for in an agency's collection of information.

(7) "Searching data sources"[176] means identifying all available public and private sources of data, including sources which do not yet exist but which might need to be created pursuant to the collection of information, and evaluating such sources to determine whether they satisfy such a request. The breadth and depth of this search will depend on the nature of the collection of information, such as whether it is voluntary or mandatory and whether there are explicit or implicit penalties for non-response, incomplete response or inaccurate response.

(8) "Completing and reviewing the collection of information"[177] means devoting the time, effort and other resources to perform all required tasks, including the final completion and

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[175] 5 CFR 1320.3(b)(1)(vi); see 44 U.S.C. 3502(2)(E).
[176] 5 CFR 1320.3(b)(1)(vii); 44 U.S.C. 3502(2)(D).
[177] 5 CFR 1320.3(b)(1)(viii); 44 U.S.C. 3502(2)(E).

fulfillment of the information request, as well as to certify (at whatever level of specificity the collection of information requires) the accuracy and/or reliability of information provided.

All time, effort and other resources which need to be expended to perform the various tasks necessary to obtain, process, organize, manage, or retain requested information represent paperwork burden.

- "Time" means time devoted by the respondent, all employees, partners and associates of the respondent, and the time of outside consultants, contractors, legal and financial advisors hired for the purpose of responding to the collection of information.

- "Resources" means the market value of all inputs other than time used to complete these tasks, including capital investments, operation and maintenance costs, and information technology, whether the resources are purchased, leased or rented. This burden may be small or trivial only in such cases where the incremental time and resources necessary to fulfill a collection of information is small or trivial.

All time, effort and other resources which needs to be expended to certify the accuracy and/or reliability of information developed, submitted, disclosed, disseminated or retained, or to certify compliance with any statutory or regulatory provision, represent paperwork burden. Such certifications generally require intensive scrutiny, whether by an individual (such as with respect to a tax filing), senior officers or managers (where the respondent is a firm), or senior elected or appointed officials (where the respondent is a government or agency), and cannot legally or practically be delegated. This burden is rarely, if ever, small or trivial and generally entails a comprehensive audit by the certifier of all components of the information or declaration which need to be certified. Audits entail additional indirect burdens on subordinates, partners, associates, consultants, counsel and other experts necessary to fully replicate and document the process used to derive the response, as well as the response itself, in a manner that the certifier can understand and credibly affirm to be accurate and valid irrespective of the degree of technical detail involved. Such certification burden should be evaluated within the context of the legal consequences to the respondent of an improper or false certification.

(9) "Transmitting, or otherwise disclosing the information"[178] means the time, effort and other resources devoted to transmitting or disclosing information to the federal agency requesting or requiring the information or to any third-party. The term "third-party" includes Federal agencies or other offices, including independent agencies, the Congress and its various offices, and the federal courts; all State, local or tribal government agencies, offices or officials; and any member of the public. Third-party disclosure includes, in addition to paper and electronic publication, situations where respondents are required to publicize information in newspapers or

[178] 5 CFR 1320.3(b)(1)(ix); 44 U.S.C. 3502(2)(F).

other periodicals; or in the form of advertisements, whether written, broadcast, or transmitted by cable, telephone or satellite.[179]

b. Categories of Burden. "[T]ime, effort, or financial resources"[180] is intended to be read broadly.[181] It includes both the value of time and the intensity of effort required of a respondent to fulfill a collection of information. Further, it includes the market value of financial, legal, technical and other resources also devoted to fulfill such a request. For purposes of the PRA, an agency is to separately account for categories of resources when developing burden estimates: (1) Time, measured in Burden hours; and (2) Financial and other resources, measured in terms of the market value of such resources.

(1) Time. Burden hours are measured taking into account the full array of personnel required to plan, develop, prepare and fulfill an information collection. As noted above, this includes the time devoted by the respondent, all employees, partners and associates of the respondent, and the time of outside consultants, contractors, legal and financial advisors hired for the purpose of responding to the collection of information.

Burden hour measurements need to properly reflect differences in the value of a diverse range of personnel resources. In order to balance the need for properly valuing these personnel with the effort of thoroughly doing so, each agency is to develop burden-hour estimates for each of four categories of labor: (a) clerical and other unskilled workers; (b) skilled- and craft-labor and other technical workers; (c) professionals and managers; and (d) executives. All wages rates need to be fully-loaded -- i.e., reflect the full cost of labor including fringe benefits.

In cases where an agency expects respondents to satisfy some part of an information collection obligation through the use of outside consultants, contractors, legal and financial advisors, the agency should provide burden-hour estimates on the basis of the four labor categories described above for these consulting services, as opposed to, for example, a lump sum cost estimate for consulting services.

Estimates of burden-hours need to include estimates of the number of respondents, the frequency of response, and the total number of burden-hours per year. Each estimate needs to be explained in the Information Clearance Package in sufficient detail to permit replication. Unless directed to do so, an agency should not make special surveys to obtain information on which to base hour burden estimates. Consultation with a representative sample of potential respondents is

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[179] "Requirements by an agency for a person to obtain or compile information for the purpose of disclosure to members of the public or 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. 44 CFR 1320.3(c)(2).

[180] 44 U.S.C. 3502(2).

[181] "The Committee wants to cover all burdens associated with an information collection." S. Rpt. 104-8, 104th Cong., 1st Sess. 36; H. Rpt. 104-37, 104th Cong., 1st Sess. 35.

desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, then a frequency distribution of expected burden should be reported along with an identification of those factors which best explain the variance.

If the request for approval is for more than one form, the agency needs to provide separate burden-hour estimates for each form for which approval is sought and aggregate the hour burdens on the Paperwork Reduction Act Submission form. If only one form is submitted, the information entered on the Paperwork Reduction Act Submission form need not be duplicated.

(2) Financial Costs and All Other Aspects of Burden. The financial costs and all other aspects of burden need to be estimated based on market prices for these resources. Such costs include all aspects of burden to the respondent described in subsection (a) above where such costs are borne directly or indirectly by subordinates, associates, agents or contractors. The agency reports information about these costs in its "Supporting Statement" attached to OMB Form 83-I.

Generally, estimates should not include purchases of equipment, or services made: (1) to achieve regulatory compliance with requirements not associated with the information collection, or (2) for reasons other than to provide information or keep records for the government.

As indicated above, "financial and all other aspects of burden" includes both non-recurring costs (such as the cost of capital investments necessary to fulfill an information collection) and recurring costs (such as the cost of operating and maintaining capital investments). These costs need to be separately identified and estimated based on prevailing market prices in accordance with generally accepted economic procedures. Appendix B provides suggested procedures for annualizing costs over the relevant information collection approval period.

c. Procedures for Estimating Burden Hours. For suggested worksheets designed to help an agency calculate burden hours, particularly for more complex or burdensome collections of information, see Appendix B.

6. Excessive Burden. Excessive burden exists in any of the following circumstances:

- A collection of information is addressed to more potential respondents than necessary to satisfy the purpose of and need for the collection.

- A collection of information includes questions that are not germane or essential to the purpose of and the need for the collection. Collections of information that include questions about personally sensitive matters (e.g., religious belief or political affiliation,[182] or questions

[182]Inquiries into areas of activity protected by the First Amendment to the Constitution may be a violation of the Privacy Act [P.L. 93-579, 5 U.S.C. 552a]. Section 552a(e)(7) requires agencies to "maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by (continued...)

that may cause persons to incriminate themselves) are presumed to be excessively burdensome. An agency may rebut the presumption by justifying the questions in terms of the purpose of and need for the collection.

- The frequency of collection exceeds the minimum necessary to achieve the purpose of and need for the collection of information.

- An alternative approach to obtaining the information would impose less burden on the public than the proposed approach. Alternative approaches include using information from administrative records, prior collections, or from nonfederal sources.

- The agency, without overriding reason, requires that respondents provide information in a format different from that in which it is usually maintained.

7. Measurement of Burden. OMB has consistently held that the "Measurement of paperwork is often difficult and imprecise in the absolute, but reliable and consistent measures of change are possible."[183] In determining the extent of burden that a collection of information imposes on the public, an agency should consult with a cross section of potential respondents to obtain estimates of the effort (burden) involved in complying with the request. These consultations should usually include not more than nine persons.

Alternatively, many agencies rely on the public rulemaking record to provide comments on the potential burden of collections of information in a proposed rule. Such comments are often a reliable and cost-effective means of assessing the impact of an information collection called for by a regulation. To focus public comment on paperwork issues, the agency should fully describe the need for an estimated burden of any collection of information in the preamble of a proposed rule and explicitly request comments on its need and likely burden.[184]

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[182](...continued)
how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity".

The Privacy Act requires express authorization, which cannot be given unless the respondent knows that the collection of information will inquire into the exercise of constitutionally protected rights. In order for express authorization to be given in such circumstances, the respondent should be informed -- immediately prior to inquiry into the protected area -- that the following question(s) deal with "(subject)" and that the respondent's answer(s) would be appreciated but is (are) neither mandatory nor required to obtain a benefit. Agencies may use other language and approaches, but the authorization must be express and unequivocal. Nothing in the request for information should in any way suggest that information on an individual's First Amendment activities is required.

[183]Information Collection Budget of the United States Government, Fiscal Year 1981, Office of Management and Budget, January 1981, p. 73.

[184] Agencies are required to solicit certain information about burden measurement during the formal comment periods. See 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(1) and Chapter V, Section C.

Unless very unusual circumstances exist, an agency should not conduct general statistical surveys to obtain burden estimates. Instead, the estimates obtained from nine or fewer deliberately selected potential respondents -- including industry associations representing the respondents -- should be extrapolated to an estimate of the total burden of the collection on the public. In situations involving collections of information from individuals, an agency may wish to test the collection instrument by asking agency staff to complete the forms and report the amount of time spent.

In evaluating the relative accuracy of agency estimates of burden, OMB reviewers will review the supporting statement accompanying the OMB Form 83-I to determine whether the agency did consult with members of the public. In addition, the reviewers will determine whether the explanation of the method by which burden was estimated appears reasonable in light of the particular collection. If the collection is a continuation of a previously approved activity, the reviewer should expect a reasonable consistency in burden per response. Any change should be explained. Reviewers may ask also affected members of the public or other Federal agencies to comment on the agency's proposed collection of information and may also ask them for their estimate of the burden of the collection.

In comparing agency estimates of the burden of a collection to estimates directly provided to OMB by members of the public, reviewers will be mindful that the agency estimate is supposed to be an estimate of the average burden multiplied by the number of respondents. Hence, the agency estimate includes values (burden estimates) for those with "simple" situations that do not require extensive effort to compile and report as well as for the more complicated situations. The public's estimate provided to OMB may or may not consider the "simple" situations.

8. Usual and Customary Activities. Excluded from the definition of burden are all time and financial resources usually and customarily incurred by persons in the course of their regular activity (e.g., in compiling and recording certain business records, or the sending of copies of a corporate annual or other reports to all requestors).[185]

The criterion for exclusion is "usual and customary." To exclude burden on this ground, it is not enough for the agency to indicate a belief, or demonstrate that a few persons usually compile such information as part of their regular practice. The agency needs to demonstrate that the practice is both usual and customary.[186] Any effort involved beyond that normally incurred in the absence of any collection of information from the Federal government is counted as burden attributed to the collection of information (e.g., time spent in transcribing information onto a collection instrument).

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[185] 5 CFR 1320.3(b)(2).

[186] Assertions that a practice is "usual and customary" will frequently involve situations where complete knowledge about the practice is not available and cannot be obtained without an extensive collection of information. Such collection would be counter to the purpose and intent of the Paperwork Reduction Act. Accordingly, Desk Officers need to exercise judgment in deciding what evidence or information to require from an agency to substantiate its "usual and customary" assertion.

9. State or Local Government Collections of Information. Burden imposed by a collection of information conducted or sponsored by an agency and imposed by a State or local government is presumed to be a Federal burden. The sponsoring agency is able overcome this presumption by showing that the State or local requirement would be imposed even if the Federal requirement had not existed.[187]

Collections of information conducted by State or local agencies in cooperation with, or under contract to a Federal agency, are deemed to be sponsored by the Federal agency, need to be approved by OMB, and the burden of the collection is a Federal burden. The State or local government may, however, include questions in the collection of information that were not requested by the Federal agency. If the added questions or modification of the Federal form require agency approval, OMB approval also needs to be obtained. If the added questions or modification of the form do not require the Federal agency's approval they are considered to be a collection of information by the State or local entity, do not constitute a collection of information subject to the PRA, do not require OMB approval, and do not constitute burden attributable to the agency.

10. Federal Cost of Collection. The sponsoring agency is responsible for selecting the lowest cost collection and analysis methodology consistent with the purpose and need for the collection. In making such a selection, the agency should not unnecessarily shift cost from the Federal Government to the respondents.[188] OMB may instruct the agency to make a substantive or material change to or disapprove proposed collections of information that are excessively costly. One important element of Federal cost is the cost of any automated data processing (ADP) investments needed by the agency to process the information. For large data collections involving new or modified ADP systems, the desk officer will assess the data collection for consistency with the agency's 5-Year Plan for Information Resources Management and existing budget authorizations.

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[187] 5 CFR 1320.3(b)(3).

[188] "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." 5 CFR 1320.5(d)(iii).

CHAPTER V. INTERNAL AGENCY REVIEW

This chapter describes the internal review of each collection of information required by the PRA and OMB regulations before the agency sends the collection to OMB. The agency is responsible for carrying out this review and confirming that each collection of information will comply with the policy criteria in the PRA.

This review is separate from the certifications discussed in Chapter VI that need to be signed for every submission. The PRA establishes this review to verify that collections meet the criteria discussed in chapter IV and to encourage the agency to improve its use of information resources.

A. WHO CONDUCTS THIS INTERNAL REVIEW?

Under the PRA, the head of each agency is ultimately responsible for the agency's implementation of the PRA, including its information resource management and paperwork control provisions.[189] The PRA instructs the agency head to appoint a Chief Information Officer (CIO)[190] to carry out these responsibilities [191] In most cases, the CIO reports directly to the agency head.[192]

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.

This CIO is to head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under the PRA, including the reduction of information collection burdens on the public.[193] With respect to the collection of information and the control

[189] "The head of each agency shall be responsible for (A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and (B) complying with the requirements of [the PRA] and related policies established by the [OMB] Director." 44 U.S.C. 3506(a)(1).

[190] "[T]he head of each agency shall designate a Chief Information Officer who shall report directly to such agency head to carry out the responsibilities of the agency under [the PRA]." 44 U.S.C. 3506(a)(2)(A). The title given this officer in the "Paperwork Reduction Act of 1995," P.L. 104-13, Section 2, 44 U.S.C. 3506(a)(2)(A), was "senior official." This title was changed to "Chief Information Officer" in the "Information Technology Management Reform Act of 1996," P.L. 104-106, Section 5125(a)(1)(A).

[191] 44 U.S.C. 3506(a)(2)(A). "The Secretary of the Department of Defense and the Secretary of each military department may designate Chief Information Officers who such report directly to such Secretary to carry out the responsibilities of the department under [the PRA]. If more than one Chief Information Officer is designated, the respective duties of these Chief Information Officers are to be clearly delineated." 44 U.S.C. 3506(a)(2)(B).

[192] 5 CFR 1320.7(b). An agency head needs to be able to retain full undelegated review authority to accommodate other laws concerning intra-agency structure, e.g., The Inspector General Act (5 U.S.C. App. 3). See 47 Fed Reg. 39521 (September 8, 1982); 60 Fed Reg. 44982-83 (August 29, 1995).

[193] "The Chief Information Officer ... shall head an office responsible for ensuring agency compliance with and

(continued...)

of paperwork the CIO is to establish a process within this office that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under the PRA.[194]

B. WHAT NEEDS TO BE REVIEWED?

The PRA requires that each agency undertake internal planning procedures in order to prepare an information collection properly. In addition, the PRA, OMB's regulation, and the OMB Form 83-I (and the instructions for the form and Supporting Statement) require each agency to demonstrate that it has undertaken these internal planning procedures. Chapter VI describes in detail specific certifications and documentation that each agency is to provide in the Supporting Statements for each collection of information that is submitted for OMB review.

These internal planning procedures were the most important administrative reforms added to the PRA in 1995. As indicated in the legislative history--

> "We strengthen the paperwork clearance process in several ways. The most important reform is the establishment of new detailed requirements for agencies to evaluate paperwork proposals and solicit public comment on them before the proposals go to OMB for review. These new requirements will, first of all, ensure the more thoughtful development of only truly 'necessary' agency information collection proposals. Just as importantly, these requirements will also help agencies more clearly and thoroughly make their case for such proposals, and thus prepare for a fair hearing before OMB on what is not 'necessary for the proper performance of the agency's functions,' as the law puts it. Together, I believe, these expanded agency requirements provide the greatest opportunity for progress in the war against red tape."[195]

The office established by the CIO is obligated to plan ahead to develop new collections of information and to seek OMB approval to extend the use of existing collections of information. The PRA requires this planning through specific requirements for internal review, public comment for at least 60 days in advance of submission of the information clearance package to

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[193](...continued)
prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under [the PRA], including the reduction of information collection burdens on the public. The Chief Information Officer and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under [the PRA]." 44 U.S.C. 3506(a)(3); see 5 CFR 1320.7(c).

[194] "With respect to the collection of information and the control of paperwork, each agency shall ... establish a process with the office headed by the Chief Information Officer ... that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under [the PRA]." 44 U.S.C. 3506(c)(1); 5 CFR 1320.7(d).

[195] Floor remarks of Senator John Glenn, 141 Cong. Rec. S 5276 (April 6, 1995).

OMB, and agency certification to OMB that the proposed collection of information meets specified substantive standards.

The PRA states what the office established by the CIO is to include in its evaluation of each proposed collection of information or extension of an existing one.[196] This office is to demonstrate that it has undertaken a proper evaluation of the collection of information by providing the certifications and supporting documentation described in Chapter VI.

The agency will have had to have carefully developed and reviewed the proposed collection of information in order to be able to make the required certification.

1. An evaluation of the need for the collection.[197]

In order to document that this evaluation has taken place, and to inform OMB of what that need is, the agency's Supporting Statement submitted to OMB is to: "Explain the circumstances that make the collection of information necessary."[198]

In the case of an existing collection of information for which the agency wishes to seek extension of an OMB approval, the agency is to evaluate the continued need for such a collection.[199] To evidence that evaluation, and to help OMB understand the practical utility for the agency of receiving that information, the agency's Supporting Statement is to include "the actual use the agency has made of the information received from the current collection."[200]

2. A functional description of the information to be collected.[201]

Agency review of the functional description and uses for the proposed collection should include an evaluation of the "practical utility" of the information to be obtained.

The agency's Supporting Statement is to: "Indicate how, by whom, and for what purpose the information is to be used."[202]

3. A plan for the collection of information.[203]

In general terms, the purpose for a plan for the collection of information is to have the agency prepare in advance to assure the "practical utility" of the information to be collected. Thus, this

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[196] 44 U.S.C. 3506(c)(1); 5 CFR 1320.8(a).
[197] 44 U.S.C. 3506(c)(1)(A)(i); 5 CFR 1320.8(a)(1).
[198] Specific Instruction A.1.
[199] 5 CFR 1320.8(a)(1)
[200] Specific Instruction A.2.
[201] 44 U.S.C. 3506(c)(1)(A)(ii); 5 CFR 1320.8(a)(2).
[202] Specific Instruction A.2.
[203] 44 U.S.C. 3506(c)(1)(A)(iii); 5 CFR 1320.8(a)(3).

plan is to include in it a plan for the efficient and effective use of the information to be collected, including the allocation of necessary resources to collect, process, and make timely and workable use of the information once received.

Specifically, in preparing this plan, an agency is to set forth the administrative means, for example, by which the agency will collect, follow-up on any non-response, validate, collate, store, and disseminate the information that is to be collected. For a collection of information that is used as a means to monitor regulatory compliance, the plan should also, for example, include consideration of the need for enforcement means to assure needed response. For a collection of information that is used to disclose information to third-parties, the plan should, for example, include an evaluation of the ability of the targeted audience to understand and act upon the information disclosed in a way that will serve the agency's program goals.

4. A specific, objectively supported estimate of burden.[204]

The agency's Supporting Statement is to include estimates of both the "hour burden" and the "total annual cost burden." For existing collections of information, the Supporting Statement is to include an evaluation of the actual burdens that have already been imposed. For a discussion of what burden is and suggested ways for estimating burden, see Chapter IV.B.5, and Appendix B.

5. An evaluation of whether (and if so, to what extent) the burden on respondents can be reduced by use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.[205]

An agency should use electronic collection techniques where such techniques reduce burden on the public, increase efficiency of government programs, reduce costs to the government and the public, and/or provide better service to the public.[206]

6. A test of the collection of information through a pilot program, if appropriate.[207]

The office established by the CIO is to ensure that each proposed and ongoing collection of information is inventoried, displays a currently valid OMB control number, and, if appropriate, an expiration date; and is reviewed by OMB in accordance with the clearance requirements of the PRA.[208]

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[204] 44 U.S.C. 3506(c)(1)(A)(iv); 5 CFR 1320.8(a)(4).

[205] 5 CFR 1320.8(a)(5); cf 44 U.S.C. 3506(c)(2)(A)(iv).

[206] For a more detailed discussion of the use of information technology as a way to reduce respondent burden and recordkeeping burden, see Chapter VI.F.

[207] 44 U.S.C. 3506(c)(1)(A)(v); 5 CFR 1320.8(a)(6).

[208] 5 CFR 1320.8(b)(1)-(2).

7. A plan for the efficient and effective management and use of the information to be collected, including necessary resources.[209]

Note that the agency is to certify to OMB that the collection of information "has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public."[210]

C. WHAT KIND OF ADVANCE OPPORTUNITY FOR PUBLIC COMMENT IS THE AGENCY TO PROVIDE?

In order to help an agency develop a workable and understandable collection of information, and to become better informed of the possible burdens involved, the agency is to provide the public with advance opportunity to comment on proposed collections of information. Unless the proposed collection is contained in a Notice of Proposed Rulemaking or unless exempted, the agency needs, for each proposed collection of information or extension of an existing one to "provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies."[211]

This notice for public comment is to occur at least 60 days before the information clearance package is submitted to OMB for review. This 60-day advance notice is required for new collections of information not contained in a proposed rule, e.g., forms, questionnaires, telephone surveys. This 60-day advance notice is also required before an agency submits any information clearance package to OMB seeking to extend OMB approval of a collection of information, including any contained in a current rule. While collections of information contained in a proposed rule do not require the 60-day advance notice, the PRA requires the agency specifically to seek comments on the same issues required for the advance 60-day notice.[212]

In this notice the agency is to solicit public comment on essentially the same issues that the agency is to evaluate during its development of the proposed collection (or consideration of the need to extend approval for an existing one). These issues are also those about which the public may have personal experience, perspectives and concerns that would help inform the agency while it carries out its evaluation, and help permit the agency to make the certification required by the PRA.

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[209] 44 U.S.C. 3506(c)(1)(A)(vi); 5 CFR 1320.8(a)(7).

[210] 44 U.S.C. 3506(c)(3)(H); 5 CFR 1320.9(h). For discussion of this certification, see Chapter VI.D.4.

[211] 44 U.S.C. 3506(c)(2)A).

[212] 5 CFR 1320.8(d)(3).

Specifically, the agency is to seek public comment to permit the agency to--[213]

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.[214]

If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the advance 60-day notice, the agency needs to explain how and from whom the public may request and obtain a copy of the collection of information that is under development. The agency is to provide this copy "without charge" and provide in the notice, "if applicable, how the public can gain access to the collection of information and related instructions electronically on demand."[215]

This advance 60-day notice, however, is designed to help the agency in its ongoing development of the new collection or evaluation of an existing collection. An agency should provide the proposed collection of information in the form into which it has been developed at that point; if the agency, for example, is at that point considering alternative approaches to collect the information, a range of possible questions, or different kinds of disclosure, the agency should be prepared to provide the public with these alternative approaches.

The agency does not have to have completed the development of the collection of information at the point of the 60-day advance notice. The interested public will have a second opportunity to submit comments at the time the agency has refined the collection of information and is submitting the information clearance package to OMB for review.[216]

Since the information clearance package is to include "a summary of the public comments received ... including actions taken by the agency in response to the comments, and the date and

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[213] 5 CFR 1320.8(d)(1)(i)-(iv).

[214] For a more detailed discussion of the use of information technology as a way to reduce respondent reporting and recordkeeping burden, see Chapter VI.F.

[215] 5 CFR 1320.8(d)(2)(ii).

[216] 5 CFR 1320.5(a)(1)(iv).

page of the publication in the Federal Register of the notice therefor",[217] the agency may need to take time after the close of the 60-day comment period to prepare and evaluate the public comments it may have received. This is particularly true if the agency decides to amend or refine the proposed collection of information based on these public comments.

According to OMB's instructions, the agency's Supporting Statement for a proposed collection of information is to describe the results of this effort to seek public comments:

> "If applicable, [the agency needs to] provide a copy and identify the date and page number of publication in the Federal Register of the agency's [60-day advance] notice, ... soliciting comments on the information collection prior to submission to OMB. [The agency needs to] summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden."[218]

If only a few written public comments are received by the agency, the agency should consider submitting them as part of the information clearance package. If a large number of public comments are received, the agency may prefer to submit the more significant written public comments, and summarize the remainder.

Appendix A contains examples of representative PRA notices that agencies have published in the Federal Register.

The PRA contains another provision calling for agency outreach to the public. Not only is the agency to provide the advance 60-day notice and opportunity for public comment, but the agency is to "otherwise consult with members of the public and affected agencies concerning each proposed collection".[219] This provision in the PRA calls upon each agency affirmatively to reach out to the public and actively consult concerning those information collections that deserve such effort. This provision thus recognizes the ongoing practice and effort by agencies to work informally with respondents and other interested parties and agencies to develop and refine their collections of information, particularly those of an ongoing nature, of particular burden, or otherwise a source of controversy. This provision also recognizes that media other than the Federal Register, e.g., the trade press and the public interest groups, can be of use in providing the interested public--potential respondents and others--with notice of a collection of information.

According to OMB's instructions, the agency's Supporting Statement for a proposed collection of information is to describe agency efforts otherwise to consult with the public.

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[217] 5 CFR 1320.5(a)(1)(iii)(F).

[218] Specific Instruction A.8.

[219] 44 U.S.C. 3506(c)(2)(A).

"Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

"Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years--even if the collection of information activity is the same as in prior periods. There may be circumstances that mitigate against consultation in a specific situation. These circumstances should be explained."[220]

D. WHAT INFORMATION IS THE AGENCY TO PROVIDE RESPONDENTS?

The PRA requires that each agency inform respondents of certain information that will help them in understanding how and why they are supposed to respond, and the impact the collection of information may have.[221] Specifically, the office established by the CIO is to ensure that each proposed and ongoing collection of information informs and provides reasonable notice to respondents of the information discussed below.[222]

1. The reasons the information is planned to be and/or has been collected.[223]

For example, a respondent is more likely to fill out a voluntary survey if the respondent understands why the agency is planning to collect the information.

2. The way such information is planned to be and/or has been used to further agency purposes and serve agency needs.[224]

If an agency explains how it plans to use the information it receives, the respondent is able to provide the information in a way that more closely fits with agency needs; this helps the respondent by reducing the likelihood of follow-up agency requests for more precisely structured information and should help the agency by improving the quality of the information provided. If the agency informs the respondent that the agency is planning to use the information provided to monitor a respondent's compliance with regulatory standards, the respondent will be able better to identify precisely the legally required information and not provide unintentionally misleading or extraneous material.

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[220] Specific Instruction A.8.
[221] 44 U.S.C. 3506(c)(1)(B)(iii).
[222] 5 CFR 1320.8(b)(3).
[223] 44 U.S.C. 3506(c)(1)(B)(iii)(I); 5 CFR 1320.8(b)(3)(i).
[224] 44 U.S.C. 3506(c)(1)(B)(iii)(II); 5 CFR 1320.8(b)(3)(ii).

If the agency is calling for a disclosure of information to third-parties or the public, the agency should explain the reasons for disclosure and the planned public utility of the disclosure in the instrument calling for the disclosure.

3. An estimate, to the extent practicable, of the average burden of the collection.[225]

The agency is to include with this burden estimate a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. Notifying the respondent of estimated reporting burden will assist the respondent in planning to answer. Public comments to the agency concerning estimated burden will help ensure that all pertinent aspects of reporting burden are identified and thereafter considered by the agency in developing new collections and extending the use of existing ones.

4. Whether responses to the collection of information are voluntary, required to obtain or retain a benefit, or mandatory.[226]

If the collection is required to obtain or retain a benefit or mandatory, the agency should cite the legal authority therefor as part of the notice to the respondents. This should ensure a higher response rate and help the respondent understand the benefit and/or need to respond in an accurate, complete manner.

5. The nature and extent of confidentiality to be provided, if any.[227]

The agency should also cite the legal provision supporting any claim of confidentiality. This should help ensure that the respondent understands the full scope and nature of the confidentiality to be provided.

6. The fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.[228]

For a general discussion of the "public protection" provision--including the requirement that an agency inform respondents that they are not required to respond to a collection of information unless it displays a currently valid OMB control number--see Chapter III.

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[225] 44 U.S.C. 3506(c)(1)(B)(iii)(III); 5 CFR 1320.8(b)(3)(iii).

[226] 44 U.S.C. 3506(c)(1)(B)(iii)(IV); 5 CFR 1320.8(b)(3)(iv).

[227] 5 CFR 1320.8(b)(3)(v). This provision was included in the regulation as a necessary component of telling the respondent of "the way such information is to be used" (44 U.S.C. 3506(c)(1)(B)(iii)(II); see 5 CFR 1320.8(b)(3)(ii)).

[228] 35 U.S.C. 3506(c)(1)(B)(iii)(V); 44 CFR 1320.8(b)(3)(vi).

CHAPTER VI. AGENCY ACTION TO DEMONSTRATE PROPER PREPARATION AND INTERNAL EVALUATION OF AN INFORMATION COLLECTION

This chapter describes the specific certifications and documentation an agency is to provide OMB to demonstrate proper preparation and internal evaluation of each collection of information.

Before an agency submits a proposed collection of information to OMB for review, the agency needs to certify that the information collection meets certain standards "and provide a record supporting such certification".[229] This certification was added to the PRA in 1995. This "record" needs to have been developed during the agency's internal review, to have been supported and augmented by public comment, and to be described and summarized in the agency's Supporting Statement for a proposed collection of information submitted for OMB review. All of these agency actions are also designed to ensure that an agency will develop a record sufficient to demonstrate that the agency has followed the internal planning procedures and met the substantive policy standards needed to demonstrate compliance with the PRA. As stated in OMB's regulation:

> "To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information:
>
> > "(i) is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;
> >
> > "(ii) is not duplicative of information otherwise accessible to the agency; and
> >
> > "(iii) 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."[230]

This certification is comprised of ten individual certifications. These ten certifications build upon and reinforce the policy concerns reflected in the long-established OMB regulatory requirements.[231] These agency actions--the statutorily required certification and compliance with OMB's regulatory requirements--are designed to ensure that OMB receives, in the Supporting Statement and supporting documentation submitted for review, the information OMB needs to support an OMB decision to approve an agency's proposed collection of information.

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[229] 44 U.S.C. 3506(c)(3); 5 CFR 1320.9.

[230] 5 CFR 1320.5(d)(1).

[231] See H. Rep. 104-99, 104th Cong. 1st Sess. 27-28.

OMB's regulatory requirements call for explanations in the agency's Supporting Statement for a proposed collection of information. In contrast, the agency should note that the agency's Supporting Statement does not require documentation to OMB of agency compliance with each substantive policy standard set forth in each of the ten certifications. Instead, the agency makes the certification as part of completing OMB Form 83-I, and is to "explain each exception to the certification statement" in the Supporting Statement.[232] Nonetheless, each agency needs to have a record supporting the certification, which would enable the agency to respond if OMB, during the course of its review, requests support for a particular aspect of the agency certification or if agency compliance becomes an issue in litigation. In addition, the OMB instructions for the agency's Supporting Statement and OMB's regulations require, in effect, that certain of the certifications be supported by specific documentation.

The OMB regulatory requirements, the individual certifications, and related instructions for the Supporting Statement are discussed below.

A. DEMONSTRATING NEED, PRACTICAL UTILITY, AND LACK OF DUPLICATION.

1. Need and Practical Utility. The agency is to certify that the proposed collection of information is necessary for the proper performance of the function of the agency, including that the information will have practical utility.[233]

In addition, an agency is to support its basis for this certification as part of the information clearance package that it submits for OMB review and approval. According to OMB's instructions, the agency's Supporting Statement for a proposed collection of information is to provide the following information to demonstrate legitimate purpose, need, and practical utility.[234] Specifically, an agency is to--

> "1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and of each regulation mandating or authorizing the collection of information.
>
> "2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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[232] Instruction A.18.

[233] 44 U.S.C. 3506(c)(3)(A); 5 CFR 1320.9(a).

[234] See Instruction A. In effect, Instruction A instructs an agency concerning how it is to "provide a record supporting [its] certification." 44 U.S.C. 3506(c)(3).

"6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

"11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

"15. Explain the reasons for any program changes or adjustments [reported on the face of OMB Form 83-I].

"16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions."

2. Lack of Duplication. The agency is to certify that the proposed collection of information is not unnecessarily duplicative of information otherwise reasonably accessible to the agency.[235]

An agency is to support the basis for this certification as part of its information clearance package. According to OMB's instructions, the agency's Supporting Statement for a proposed collection of information is to--

"Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in Item 2 [of the Supporting Statement].[236]

B. DEMONSTRATING AGENCY EFFORTS TO REDUCE BURDEN

1. Estimates of Burden. The Supporting Statement needs to provide estimates of the hour burden of the collection of information, and provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.[237]

The Supporting Statement should provide the number of respondents, the frequency of response, the annual hour burden, and an explanation of how the burden was estimated. For a more

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[235] 44 U.S.C. 3506(c)(3)(B); 5 CFR 1320.9(b).

[236] Specific Instruction A.4.

[237] Specific Instruction A.12 & A.13.

detailed discussion of how to estimate burden, both as a matter of time, financial costs, and other aspects of burden, see Chapter IV.B.5 and Attachment B.

2. Reducing Burden for Small Entities. The agency is to certify that the proposed collection of information reduces to the extent practicable and appropriate the burden on persons who will provide information to or for the agency, including with respect to small entities as defined in the Regulatory Flexibility Act,[238] through the use of such techniques as:

a. Establishing different compliance or reporting requirements or timetables for respondents with fewer available resources;

b. Clarifying, consolidating, or simplifying compliance and reporting requirements; or

c. Exempting certain respondents from coverage of the collection of information, or any part thereof.[239]

This certification is intended to prevent undue burdens on small businesses, which often have limited resources to comply with collections of information.[240] Techniques that might be used to simplify requirements for small entities include asking fewer questions of small entities, taking smaller samples of these entities than of larger ones, and requiring small entities to provide information less frequently than larger ones.

An agency is to support its basis for this certification in its information clearance package. According to OMB's instructions, if "the collection of information impacts small businesses or other small entities," the agency's Supporting Statement for a proposed collection of information is to "describe any methods used to minimize burden."[241]

3. Frequency. The Supporting Statement needs to explain why the agency is requiring respondents to report information to the agency more often than quarterly.[242]

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[238] A "small entity" is defined to mean "small business", "small organization" and "small governmental jurisdiction" 5 U.S.C. 601(6). See 5 U.S.C. 601(3), (4), and (5). The Regulatory Flexibility Act was amended on March 29, 1996, by Subtitle D, Title II, P.L. 104-121. These definitions were not amended, but were made subject to court review. 5 U.S.C. 611(a).

[239] 5 CFR 1320.9(c).

[240] "Particularly for small businesses, paperwork burdens can force the redirection of resources away from business activities that might otherwise lead to new and better products and services, and to more and better jobs. Accordingly, the Federal Government owes the public an ongoing commitment to scrutinize its information requirements to ensure the imposition of only those necessary for the proper performance of an agency's functions." H. Rep. 104-37, 104th Cong. 1st Sess. 23.

[241] Specific Instruction A.5.

[242] 5 CFR 1320.5(d)(2)(i); Specific Instruction A.7. Note that 5 CFR 1320.5(d)(2) states "unless the agency is able to demonstrate, in its submission for OMB clearance, that [the identified] characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve [the] collection of information." In the absence of such a demonstration of need for the listed regulatory requirements,

(continued...)

This guideline establishes a principle designed to limit burden. The frequency with which an agency requires respondents to report or disclose information needs to be directly associated with the agency's purpose and need for the information, and the practical utility of information collected on the proposed schedule.

4. Response Time. The Supporting Statement needs to explain why the agency is requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it.[243]

This guideline presumes that 30 days is usually enough time for respondents to provide a written response to a collection of information. Before approving any collection requirement that calls for response within a specified period of time, OMB will consider the agency's purpose and need for the information, and the respondent's ability to provide it. Thirty days may not be enough time if respondents have to establish new systems (computerized or other) to collect, compile, and maintain records. Information rapidly collected, compiled, and reported may be inaccurate or unreliable, and such information cannot serve the purpose and need for the collection.

This guideline does not address collections of information conducted through personal interviews or other collection techniques. Nevertheless, OMB will consider this principle of response time when reviewing any collection of information.

5. Number of Copies. The Supporting Statement needs to explain why the agency is requiring respondents to submit more than an original and two copies of any document.[244]

Rarely is there adequate justification to require respondents to submit more than a single copy of a document, and frequently the collecting agency does not need more than the original of any report filed by respondents. The exact number of documents that an agency requires, however, depends upon the purpose for the collection and how the agency processes the report.

An acceptable basis for OMB approving a request for more than an original and two copies occurs, for example, when applications or other documents are critiqued by nonfederal peer reviewers and the materials are not text printed on standard paper that would allow for each reproduction by the agency. Such "panel" reviews are often conducted for applications for arts, humanities, and science grants, among others. In such cases, the documents contain photographs, drawings, or other items that are difficult to reproduce. Substantial justification may warrant approval of a variance from the guideline for other reasons and uses as well.

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[242](...continued)
OMB will disapprove the proposed collection of information on the grounds that the collection either was not necessary for the proper performance of the agency function, was excessively burdensome, or had no practical utility.

[243] 5 CFR 1320.5(d)(2)(ii); Specific Instruction A.7.

[244] 5 CFR 1320.5(d)(2)(iii); Specific Instruction A.7.

6. Plain English. The agency is to certify that the proposed collection of information is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond.[245]

This certification, by calling upon the agency to draft a collection of information "using plain, coherent, and unambiguous terminology and is understandable" to respondents, is seeking to assure that each agency reduces burden on respondents. This certification is designed to reinforce a policy concern reflected in the definition of "burden" in the PRA--which emphasizes, along with other aspects of burden, "the resources expended for ... reviewing instructions; [and] completing and reviewing the collection of information".[246] A clear and understandable questionnaire and supporting instructions will help keep to a minimum the burden imposed on respondents.

7. Consistency with Existing Reporting and Recordkeeping Practices. The agency is to certify that the proposed collection of information is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond.[247]

This certification, by calling upon the agency to try to implement a collection of information "in ways consistent and compatible" with the respondents' existing reporting and recordkeeping practices, encourages each agency to avoid the imposition of unnecessary burden. This certification reinforces a policy concern expressed in the PRA definition of "burden." This definition explicitly includes as an aspect of burden, "the resources expended for ... adjusting the existing ways to comply with any previously applicable instructions and requirements".[248] If an agency assures that a respondent is able to reply to the agency's collection of information in ways "consistent and compatible" with the respondent's existing reporting and recordkeeping systems, then the respondent will be able to reply with less burden.

C. DEMONSTRATING AGENCY EFFORTS TO REDUCE BURDEN: RECORDKEEPING

1. Length of Recordkeeping Requirement. The agency is to certify that the proposed collection of information indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified.[249]

The agency needs to be particularly sensitive to assure that recordkeeping requirements are imposed for only as long as the agency has legitimate need. One of the principal burdens arising from a recordkeeping requirement is the cost of storage (combined with the need to keep records

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[245] 44 U.S.C. 3506(c)(3)(D); 5 CFR 1320.9(d).
[246] 44 U.S.C. 3502(2)(A) & (E).
[247] 44 U.S.C. 3506(c)(3)(E); 5 CFR 1320.9(e).
[248] 44 U.S.C. 3502(2)(C); 5 CFR 1320.3(b)(1)(v).
[249] 44 U.S.C. 3506(c)(3)(F); 5 CFR 1320.9(f).

of what is stored, and where, so that data can be retrieved on request). This burden is ended when the records no longer have to be retained. This certification was added by the conferees because record managers had complained that they did not have clear guidance from agencies concerning when records could be removed from their files and destroyed.

2. Retention Periods. The Supporting Statement needs to explain, for other than health, medical, government contract, grant-in-aid, or tax records, why the agency is requiring respondents to retain records for more than three years.[250]

In the agency certification, an agency is confirming that a proposed collection of information "indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified."[251]

But, under this guideline, an agency also needs to justify the specified retention period in the Supporting Statement. Absent statutory or other substantial need, this guideline sets three years as an upper bound. Any record retention for longer than three years needs to be reapproved by OMB three years after the initial approval.

Each requirement for the retention of records for any period of time should be justified in terms of the purpose of and need for the information to the agency. Retention requirements involve more than simply holding onto the information. In some cases, the requirement results in an otherwise unnecessary expenditure of funds to maintain the records and to physically house them. In other cases, the requirement results in increased need for computer memory and security of stored computer files. Accordingly, a retention requirement may impose unnecessary costs and burdens on the respondents inconsistent with the practical utility of the record and beyond that justifiable in terms of the purpose and need for the requirement.

D. DEMONSTRATING PRA IMPLEMENTATION

1. Minimizing Federal Cost. The Supporting Statement needs to provide estimates of an annualized cost to the Federal Government of conducting the collection of information.[252]

In addition, the agency is to include in the Justification Statement a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not be incurred without the proposed collection of information.

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[250] 5 CFR 1320.5(d)(2)(iv); Specific Instruction 7.A.

[251] 5 CFR 1320.9(f).

[252] "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." 5 CFR 1320.5(d)(iii); Specific Instruction A.14..

2. Expiration Date. If the agency decides that it would not be appropriate for a proposed collection of information to display an expiration date, the Supporting Statement needs to include an explanation for the agency's decision.[253]

Generally, each information collection is to display an expiration date, "if appropriate."[254] Such expiration dates should be printed in the upper right hand corner of a document in close proximity to the control number. If forms, schedules, or other documents are not used, the date should be made known to potential respondents in the same manner as they are advised of the control number. If the agency decides that displaying an expiration date is not appropriate, then, according to OMB's instructions, "if seeking approval to not display the expiration date for OMB approval of the information collection," the agency's Supporting Statement for a proposed collection of information is to "explain the reasons that display would be inappropriate."[255]

3. Informing Respondents of Required Information. The agency is to certify that the proposed collection of information informs potential respondents of the required information.[256]

In summary, respondents are required to be informed of the agency's reasons for conducting the collection of information; the way in which the information is to be used; the estimated burden of collecting the information; whether response is voluntary, required to obtain a benefit, or mandatory; the nature of confidentiality to be provided; and "the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."[257] See discussion in Chapter V.C.

4. Adequate Agency Planning and Staffing. The agency is to certify that the proposed collection of information has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public.[258]

This certification is intended to assure that the collection of information will have "practical utility,"[259] i.e., the CIO, through the responsible office,[260] has carried out the required internal review, including the development of "a plan for the efficient and effective management and use of the information to be collected, including necessary resources."[261] "Necessary resources"

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253 5 CFR 1320.5(a)(1)(iii)(C); Specific Instruction A.17.

254 44 U.S.C. 3506(c)(1)(B)(i); 5 CFR 1320.8(b)(1).

255 Specific Instruction A.17.

256 44 U.S.C. 3506(c)(3)(G); 5 CFR 1320.9(g). For information to be provided, see 5 CFR 1320.8(b)(3).

257 5 CFR 1320.8(b)(3)(vi). See 44 U.S.C. 3506(c)(1)(B)(iii); 5 CFR 1320.8(b)(3).

258 44 U.S.C. 3506(c)(3)(H); 5 CFR 1320.9(h).

259 44 U.S.C. 3502(11).

260 44 U.S.C. 3506(a)(3).

261 44 U.S.C. 3506(c)(1), particularly 44 U.S.C. 3506(c)(1)(A)(vi); S. Rep. No. 104-8, 104th Cong. 1st Sess. 45-46 ; H. Rep. 104-37, 104th Cong. 1st Sess. 43-44.

includes the personnel, as well as supporting equipment and other technological means to use the information "in a timely and useful fashion."[262]

E. DEMONSTRATING AGENCY USE OF APPROPRIATE STATISTICAL METHODOLOGY

1. Avoidance of Unreliable Statistical Studies. If the agency is seeking to implement a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study, the Supporting Statement needs to explain why.[263]

This guideline intends generally to prohibit statistical surveys that do not produce reliable results for the population under study. When survey results can not be generalized, it is usually because of poor methodology or execution that introduces errors or uncertainties of such size that the data do not support needed inferences. While any substantial bias or even excessive variance can prevent needed generalization, the most common failures are nonrandom selection, coverage gaps, and nonresponse.

The statistical laws that permit inference from a sample to a population assume complete coverage, complete response, and random selection. If any of these conditions are not met, then inferences cannot be demonstrated to be valid. Thus, for example, "quota samples" cannot produce results that can be generalized to the universe of study. Likewise, samples drawn from a substantially incomplete frame, or which suffer from significant nonresponse cannot support valid statistical inferences.

The agency's explanation should be based on more than simple assertions or ad hoc demonstrations of generalizability. Plans that purport to compensate for unmeasured errors with published caveats or adjustments based on untested assumptions do not satisfy this guideline. A variance from this guideline is warranted for pilot studies, case studies associated with generalizable collections, or tests to determine the need for or gather design information for a generalizable survey.

For a more complete discussion of this issue, see Appendix C, "Frequently Asked Statistical Questions."

2. Explanation for Use of Unapproved Statistical Data Classifications. If an agency is seeking to implement a statistical survey that requires the use of a "statistical data classification" that has not itself been reviewed and approved by OMB, the Supporting Statement needs to explain why.[264]

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[262] 44 U.S.C. 3502(11).

[263] 5 CFR 1320.5(d)(2)(v); Specific Instruction A.7..

[264] 5 CFR 1320.5(d)(2)(vi); Specific Instruction 7.A.

A "statistical data classification" is a government-wide standard adopted under the President's statistical policy authority.[265] Such classifications serve several purposes, specifically, to provide consistency across two or more federal programs and to support both governmental and private research into issues of broad public interest. If an agency uses a statistical data classification, it needs to provide respondents with clear instructions, including complete explicit definitions of any response categories or codes that the respondent is asked to use.[266]

OMB will review the use of such classifications to verify that the information they call for is the minimum amount required to administer a program and that the classification scheme minimizes cost and burden imposed on the public. Thus, an agency needs to bear the full cost entailed by prescribed classification or coding schemes (e.g., providing instructions, a manual, or technical support if needed) and may not use such schemes to shift agency information costs to respondents (e.g. if information can be provided by respondents in another form with less cost or burden, then the agency needs to bear the cost of coding the information into the preferred format.)

Statistical classifications proposed for use in federal data collections are initially reviewed for consistency with established OMB statistical data classifications. When no comparable OMB standard has been adopted, new classifications are reviewed for compliance with OMB classification principles. Proposed classifications are also reviewed for compatibility with current consensus standards or international standards (e.g., the World Health Organization's ICD-10[267] to the extent that such classifications are developed and maintained in a manner consistent with OMB classification principles.

Current OMB statistical classifications and the principles that govern such classifications are discussed more fully in Appendix C.

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[265] Statistical policy authority within the executive branch was established explicitly in section 103 of the Budget and Accounting Procedures Act of 1950 --

> "The President, through the Director of the Bureau of the Budget, is authorized and directed to develop programs and to issue regulations and orders for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information for any purpose by the various agencies in the executive branch of the Government. Such regulations and orders shall be adhered to by such agencies."

64 Stat. 834 (codified at 31 U.S.C. 18b). It was recodified, without substantive change, in 1982, at 31 U.S.C. 1104(d). The authority was delegated to OIRA pursuant to Section 3(a) of the Paperwork Reduction Act of 1980 (94 Stat. 2825) and Executive Order No. 10253 (31 U.S.C. 1104 note, and Codification of Presidential Proclamations and Executive Orders (1945-89), p. 687).

[266] Cf. the table and instructions for selecting a principal business code included in Schedule C of IRS form 1040.

[267] "The Tenth Revision of the International Statistical Classification of Diseases and Related Health Problems", World Health Organization, Geneva, 1992.

3. Use of Effective and Efficient Statistical Methodology. The agency is to certify that the proposed collection of information uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected.[268]

The PRA stresses the importance of using proper statistical methodology in collecting information.[269] An agency is to use proper statistical methodologies to reduce burden where it can. To support the basis for this certification, the agency's Supporting Statement for a proposed collection of information is to explain why the agency is not using statistical methods "in any case where such methods might reduce burden or improve accuracy of results."[270]

If the agency is planning to employ statistical methods in its collection of information, then the agency needs in its Supporting Statement to demonstrate that the statistical methodology is proper--

> "[When the agency indicates on the OMB Form 83-I that the information collection employs statistical methods,] the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:
>
> "1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.
>
> "2. Describe the procedures for the collection of information including:
>
> -- Statistical methodology for stratification and sample selection,
>
> -- Estimation procedure,
>
> -- Degree of accuracy needed for the purpose described in the justification,
>
> -- Unusual problems requiring specialized sampling procedures, and
>
> -- Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

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[268] 44 U.S.C. 3506(c)(3)(i); 5 CFR 1320.9(i).
[269] 44 U.S.C. 3501(9); 44 U.S.C. 3504(e); 44 U.S.C. 3506(e).
[270] Specific Instruction B, introduction.

"3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected need to be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

"4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of tests may be submitted for approval separately or in combination with the main collection of information.

"5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency."[271]

4. Explanation for Paying Respondents. The Supporting Statement needs to include an explanation for a decision to provide for any payment or gift to respondents, other than remuneration of contractors or grantees.[272]

This guideline seeks to limit each agency from inducing respondents to comply with unnecessary paperwork requests or to shift the burden of a collection of information from respondents to the taxpayers at large. In the explanation, an agency should demonstrate[273] that a payment or gift will significantly improve validity and reliability[274] to an extent beyond that possible through other means, and that the alternatives are not likely to produce that level of reliability necessary for the purpose of and need for the collection. Similarly, an agency may pay respondents if the agency can demonstrate that there is a need to pay a respondent for exerting unusual effort in cooperating in responding to a collection of information (e.g., keeping daily logs for an extended period of time).

According to OMB's instructions, the agency's Supporting Statement for a proposed collection of information is to "explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees."[275]

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[271] Specific Instruction B, "Collections of Information Employing Statistical Methods."

[272] 5 CFR 1320.5(a)(1)(iii)(D); Specific Instruction A.9.

[273] In general, the demonstration should be on the basis of prior experience with paid and unpaid solicitations of response from a similar population by the agency or other Federal or nonfederal collectors of information. In special circumstances, it may be appropriate to approve of a limited test of an agency hypothesis that payment will result in significantly improved reliability.

[274] The term "reliability" is used in its statistical sense and, as used here, implies a degree of precision and accuracy (freedom from bias) suitable for the intended purposes of the collection of information.

[275] Specific Instruction A.9.

F. DEMONSTRATING USE OF APPROPRIATE INFORMATION TECHNOLOGY.

One purpose of the PRA is to "ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public."[276] An agency, in seeking public comment on proposed collections of information, is required to solicit public comment to "minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology."[277]

In signing the '95 PRA, President Clinton specifically recognized these concerns:

> "From this point forward, I want all of our agencies to provide for the electronic submission of every new government form or demonstrate to OMB why it cannot be done that way. The old way will still be available, but I think once people see how fast and efficient electronic filing can be, we'll see less paperwork and more of these. [Holding up computer disk.] Do so, we're trying to do our part to act in good faith the way these Members of Congress intended the executive branch to act."[278]

1. Planned Use of Information Technology. The Supporting Statement needs to indicate whether (and if so, to what extent) the proposed collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and an explanation for the decision.[279]

The agency's Supporting Statement for a proposed collection of information is to describe the extent to which the agency's collection of information uses information technology--both by the respondent and the agency. In particular, the agency is to describe efforts to use technology to reduce burden on respondents. According to OMB's instructions, the agency is to--

> "Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g, permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden."[280]

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[276] 44 U.S.C. 3501(10). See also 44 U.S.C. 3504(h)(5), which calls upon agencies to "promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public."

[277] 44 U.S.C. 3506(c)(2)(A)(iv).

[278] Presidential Documents, Vol. 31, No. 21, p. 886 (May 29, 1995).

[279] 5 CFR 1320.5(a)(1)(iii)(E); Specific Instruction A.3.

[280] Specific Instruction A.3.

2. Use of Information Technology to Reduce Burden and Improve Quality of Data. The agency is to certify that the proposed collection of information, to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.[281]

OMB Circular A-130 articulates a basic assumption that modern information technology can help the government provide better service to the public through improved management of government programs. One potentially useful application of information technology is in the government's collection of information. While some information collections may not be good candidates for electronic techniques, many are. Agencies with major electronic information collection programs have found that automated information collections allow them to meet program objectives more efficiently and effectively. Electronic data interchange (EDI) and related standards for the electronic exchange of information will ease transmission and processing of routine business transaction information such as invoices, purchase orders, price information, bills of lading, health insurance claims, and other common commercial documents. EDI holds similar promise for the routine filing of regulatory information such as tariffs, customs declarations, license applications, tax information, and environmental reports. Benefits to the public and agencies from electronic information collection appear substantial. Electronic methods of collection reduce paperwork burden, reduce errors, facilitate validation, and provide increased convenience and more timely receipt of benefits.

Information technology can also help the private sector respond to Federal data collections. The private sector has made great strides in automating its business practices. Companies now routinely exchange purchase orders, invoices, and similar documents in electronic form. Private institutions often maintain financial and other data in electronic form. Particularly for ongoing information collections, it may be more reliable and easier to arrange information exchange through electronic means than through the preparation and review of paper responses.

The policy in Section 8a(3) encourages agencies to explore the use of automated techniques for collection of information, and sets forth conditions conducive to the use of those techniques--

> "Agencies shall use electronic collection techniques where such techniques reduce burden on the public, increase efficiency of government programs, reduce costs to the government and the public, and/or provide better service to the public. Conditions favorable to electronic collection include:
>
> "(a) The information collection seeks a large volume of data and/or reaches a large proportion of the public;
>
> "(b) The information collection recurs frequently;

[281] 44 U.S.C. 3506(c)(3)(J); 5 CFR 1320.9(j).

"(c) The structure, format, and/or definition of the information sought by the information collection does not change significantly over several years;

"(d) The agency routinely converts the information collected to electronic format;

"(e) A substantial number of the affected public are known to have ready access to the necessary information technology and to maintain the information in electronic form;

"(f) Conversion to electronic reporting, if mandatory, will not impose substantial costs or other adverse effects on the public, especially State and local governments and small business entities."[282]

Given the importance and need for agencies to move more toward the use of electronic collection techniques, agencies need, for those information collections that appear to meet the criteria in Circular A-130, to carefully consider the possibility of the effective use of electronic information collection techniques. Specifically, as a way to demonstrate this consideration, agencies should, in their Supporting Statements:

a) Demonstrate consideration of possible use of improved information technology and other means outlined in Circular A-130 to facilitate the submission of information by respondents and the processing and use of the resultant data by the agency, including use of voluntary standards and Federal Information Processing Standards (FIPS), particularly FIPS Publication 161, "Electronic Data Interchange."

b) Where applicable, identify any administrative or regulatory impediments to the use of electronic information collection techniques. In the event such impediments exist, a plan for removing them should be stated. Agencies should also identify any specific statutory impediments that may exist to the conversion to electronic reporting.

c) For information that will ultimately be made public, the agency should state its plans for disseminating the information to the public. This should include an evaluation of the media and formats deemed likely to be most appropriate for this purpose.

G. ASSURING PROTECTION FOR CONFIDENTIALITY AND TRADE SECRETS

1. Proper Confidentiality Pledge. If an agency is seeking to implement a collection of information that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are

[282] 58 Fed. Reg. 36068, 36072 (July 2, 1993).

consistent with the pledge, or which unnecessarily impede sharing of data with other agencies for compatible confidential use, the agency needs to explain why.[283]

OMB has traditionally reviewed confidentiality pledges for consistency with statutory requirements and to ensure full consideration of the rights of respondents. The 1995 amendments to the PRA establish more explicit policies with respect to confidentiality pledges.

The PRA now requires OMB to develop policies, principles, standards, and guidelines for privacy and confidentiality generally; the integrity of confidentiality pledges; and the confidentiality of information collected for statistical purposes.[284] In addition, the PRA tasks OMB to oversee agency compliance with related requirements, including the provision that agencies "fully honor pledges of confidentiality,"[285] and with related policy concerns.[286]

2. Trade Secrets and Confidential Information. The Supporting Statement needs to explain why the agency is requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.[287]

This guideline intends to avoid the inappropriate release of confidential information to unauthorized persons through insufficient administrative protection. This guideline does not affect any legal obligation of an agency to release information under the Freedom of Information Act or other applicable statute.

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[283] 5 CFR 1320.5(d)(2)(vii); Specific Instruction A.10.

[284] See 44 U.S.C. 3504(e)(1), 3504(e)(5), & 3504(g)(1).

[285] 44 U.S.C. 3506(e)(3).

[286] 44 U.S.C. 3506(b)(1)(C), 3506(e)(2)-(4), & 3506(g)(1).

[287] 5 CFR 1320.5(d)(2)(viii); Specific Instruction A.7.

CHAPTER VII. CLEARANCE PROCESS FOR REQUESTS OF OMB APPROVAL

This chapter describes the procedures each agency should follow to submit information clearance packages to OMB.

Before an agency may conduct or sponsor[288] a collection of information subject to the Paperwork Reduction Act, it needs to submit the proposed collection of information for OMB review. Before submitting it for OMB review, the agency needs to be ready to demonstrate to OMB that each collection of information it imposes on the public is necessary for the proper performance of agency functions[289] and meets the other standards discussed in Chapter IV. The information clearance package needs to include the proposed collection of information, the OMB Form 83-I, the certification, the Supporting Statement, a summary of any public comments and the agency's responses to those comments, and other supporting documentation, as described below.

Based on that review, and the material OMB receives from the agency and other sources (other Federal agencies, interested parties, and the public), OMB will approve, instruct the agency to make a substantive or material change to, or disapprove, the collection of information. The procedures specifying how agencies are to submit, and how OMB is able to act upon, information clearance packages are set forth in the OMB regulations.[290]

A. WHO SHOULD REQUEST OMB APPROVAL?

Each proposed collection of information needs to have been reviewed and approved by the sponsoring agency head or CIO, or their designee.[291]

1. Conducting Agency.[292]

a. General. An agency carrying out a collection of information for itself needs to seek and obtain OMB approval.

Likewise, an agency carrying out a collection of information on behalf of a person or entity not covered by the PRA needs to seek and obtain OMB approval. For example, the Bureau of the Census may conduct an industry study at the request of and paid for by industry. The Bureau of the Census needs to seek and obtain OMB approval for that collection of information. OMB

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[288] For a general discussion of what it means to "conduct" or "sponsor" a collection of information, see Chapter II.A.2 & 3.

[289] 44 U.S.C. 3508.

[290] See, generally, 5 CFR 1320.5, and 1320.10-1320.12.

[291] 5 CFR 1320.7(e).

[292] For a general discussion of "conduct," see Chapter II.A.2.

approval is required even if the exempt entity's sponsorship stems from legislation, judicial decree, or a treaty with one or more foreign governments.

On the other hand, if an agency is conducting a collection of information sponsored by another covered agency, the sponsoring agency needs to obtain OMB approval and a valid OMB control number for the collection of information.[293] For example, for any survey conducted by the Bureau of the Census for the Department of Labor, the Department of Labor needs to obtain OMB approval and a valid control number which it will then provide to the Bureau of the Census.

b. Multiple Conducting Agencies.

(1) What happens if agencies use the same collection of information but respondents differ? If an agency is using a collection of information approved for use by another agency, but wants to gather information from a different group of respondents, the agency needs to seek and obtain OMB approval and a currently valid control number for the collection of information.

(2) What happens if agencies are collecting the same information from the same respondents? If two or more agencies are obtaining the same information from the same respondents, the agencies should agree among themselves which agency will act as the collecting agent for all of them. That agency needs to seek OMB approval and a valid control number, although the information clearance package needs to identify the other agencies involved and describe their use of the information. If the agencies are not able to agree on a single agency, OMB may designate one of the agencies to be the collecting agency.[294]

2. Sponsoring Agency.[295]

a. General. The sponsoring agency needs to obtain OMB approval and a currently valid OMB control number for the collection of information. The OMB number should be given to the entity carrying out the collection, to display it on the collection instrument.[296] Stated another way, the entity carrying out the collection of information (whether or not it is covered by the PRA) that is sponsored by a covered agency needs to have that sponsoring agency obtain OMB approval and a currently valid OMB control number to permit the entity carrying out the collection of information.

b. What happens if multiple agencies sponsor a collection of information? When more than one agency sponsors a collection of information, each agency needs to obtain OMB approval and a valid control number for its part of the collection. However, one agency may take the lead in

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[293] 5 CFR 1320.5(a), 5 CFR 1320.3(d).

[294] 44 U.S.C. 3509 and 3510.

[295] For a discussion of "sponsor," see Chapter II.A.3. That discussion describes when an agency is considered to be a sponsor of a recordkeeping requirement, a third-party disclosure, a grantee, and a privately conducted survey.

[296] 5 CFR 1320.5(a), 5 CFR 1320.3(d).

submitting the information collection on behalf of the others. The information clearance package needs to describe the other agencies using the information and their need for the information.

B. WHAT SHOULD AN AGENCY INCLUDE IN ITS INFORMATION CLEARANCE PACKAGE?

1. General Requirements. An agency requesting OMB review and approval of a collection of information needs to submit two signed copies of its information clearance package.[297] Each information clearance package needs to contain the following:

- The proposed collection of information in the appropriate form or format, including documents to be used in the collection of information, or the document(s) describing the collection of information (i.e., forms, schedules, questionnaires, handbook, manual, interview plan or guide, rule, regulation, electronic media, or other document),
- The OMB Form 83-I (entitled "Paperwork Reduction PRA Submission,"[298]),
- The certification,
- The Supporting Statement (which includes the record supporting the certification),[299] and other supporting documentation,
- A summary of any public comments and the agency's responses to those comments,
- The text of the 60-day [300] and 30-day Federal Register notices [301] and the actual or expected dates of publication for each,
- A copy of the relevant statute and regulation mandating or authorizing the collection of information,[302]
- Interviewer guides or instructions,
- Letters or other explanatory material to be given or sent to prospective respondents, and

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[297] Preamble to OMB Form 83-I.

[298] For detailed suggestions on how to fill out the OMB Form 83-I, see "Instructions for Completing OMB Form 83-I," Attachment D.

[299] For the details of what is to be provided in the certification, see Chapter VI.

[300] For the details of what is to be provided, see Chapter V.C.

[301] 5 CFR 1320.10(a), 1320.11(b), 1320.12(c). For details on what has to be included in this Federal Register notice, see Chapter VII.E.1.b., below.

[302] Supporting Statement, Specific Instruction A.1.

- Letters and other materials to be given or sent to members of the public who do not respond.

The OMB Desk Officer may also ask the agency to provide additional information about the proposed collection of information.[303]

If an agency submits a proposed collection of information used or required to satisfy a provision in a regulation (even though the collection may not be specifically set forth in a regulation), the agency also needs to include in the information clearance package a copy of the pertinent regulation.[304]

The summary of the public comments received needs to include actions taken by the agency in response to the comments, and the date and page of the publication in the Federal Register of the notice.[305] The agency's Supporting Statement for a proposed collection of information is to specifically address comments received on cost and hour burden.[306]

If only a few written public comments are received by the agency, the agency should consider submitting them in lieu of a summary as part of the information clearance package. If a large number of public comments are received, the agency may prefer to submit the more significant written public comments, and summarize the remainder.

If the agency information clearance package fails to include a copy of either the 60-day or the 30-day Federal Register notices, or if the agency's Federal Register notices fail to include the basic information called for, OMB may (1) disapprove the agency clearance request, because of failure to meet these notice requirements, or (2), prior to taking any action on the clearance request (and assuming there remains adequate time for the public actually to receive and react to the notice), have the agency publish an acceptable notice in the Federal Register.

2. Multiple Collections in a Single Request. An agency may include two or more collections in a single request to OMB for approval. In general, an agency should package material into a single submission in such a way as to reasonably achieve the greatest coverage of an operating program's paperwork consistent with good management practice. An agency, however, needs to take care with submissions that include a combination of two or more types of collections of information. This is important because each type may require a different action and these actions may have different time frame requirements. For example, collections of information called for on printed forms are reviewed according to certain procedures which do not apply to collections of information contained in regulations which may be included in the same request. In addition, agency submissions need to be understood easily by the public to facilitate public comment; packages which contain multiple submissions may be too complex for ready comprehension.

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303 44 CFR 1320.5(a)(1)(iii)(G).

304 44 U.S.C. 3507(a)(1)(C); 44 U.S.C. 1320.5(a)(1)(iii)(G).

305 5 CFR 1320.5(a)(1)(iii)(F).

306 Specific Instruction A.8.

OMB may require an agency to separate related submissions so that each type of submission is properly classified and acted on. On its own initiative or upon agency request, OMB may consolidate or break up collections of information contained in one or more docket files. OMB may also allow the continued use of the control number for a discontinued docket file until its approval expires or the agency reprints the collection documents.

C. WHERE SHOULD AGENCIES SUBMIT AN INFORMATION CLEARANCE PACKAGE?

An agency is to submit all requests for OMB review, except collections of information involving Standard or Optional Forms, to the:

Office of Information and Regulatory Affairs
Office of Management and Budget
Docket Library, Room 10102
725 17th Street, N.W.
Washington, D.C. 20503

D. WHEN SHOULD AN AGENCY SUBMIT AN INFORMATION CLEARANCE PACKAGE?

An agency should request OMB approval far enough in advance of the planned collection of information, or in advance of the expiration of a previously approved control number, to allow for a full 60-day OMB review.

An agency should pay particular attention to the expiration dates of existing collections of information. An agency may, through inaction, nullify reporting, recordkeeping, or disclosure requirements simply by allowing OMB approval for a collection of information to expire. If an agency fails to resubmit a collection of information requirement after its clearance expires, the "public protection" provision in the PRA precludes the agency from penalizing persons who fail to respond to the collection of information.[307] This is true regardless of whether the collection of information is in a form or a current regulation.

OMB requires each agency to submit collections of information for review 60 days prior to the current expiration dates.[308] Every month, OMB routinely sends agency information collection clearance officers chronological listings of every collection of information that will expire within 120 days. Thus, an agency that does not seek to renew a collection of information is not in compliance with OMB's regulation. To prevent inadvertent noncompliance with this regulation

[307] For a general discussion of this "public protection" provision, see Chapter III.

[308] 5 CFR 1320.10(e)(1)(ii); 5 CFR 1320.12(a)(2).

and the PRA, an agency should establish an information collection management tracking system that ensures submission of rules to OMB at least 60 days prior to current expiration dates (this system should also account for the agency's 60-day public comment period that precedes OMB review).

If the head of the agency or the CIO, or their designee, determines that the collection meets the criteria for emergency processing (see discussion later in this chapter),[309] an agency may request that OMB approve or disapprove a proposed collection within a specified time period. Collections of information approved under requests for emergency processing can only be given approval for a maximum of 180 days.[310]

Agency plans for a new collection of information, or extension of an existing collection, should allow sufficient time for printing the collection instruments. Instruments that display expired control numbers or that fail to inform respondents that a response is not required unless the collection of information displays a valid control number may not be used. If they are used, the agency does so in violation of the PRA and is subject to the Public Protection clause of the PRA and regulations. Instead of destroying unused stocks, an agency may change the expiration date of unused forms to reflect the new expiration date, or insert a correction into the form.

The review of a collection of information begins at OMB upon the date of receipt of the agency's request for approval. The date of receipt is the business day until 12:00 noon. All submissions received after 12:00 noon are deemed to be received on the following business day.[311]

E. WHAT IS THE CLEARANCE PROCESS FOR FORMS (COLLECTIONS OF INFORMATION NOT CONTAINED IN PROPOSED OR CURRENT RULES)?

The following portion describes clearance procedures for collections of information not contained in proposed or current rules, such as questionnaires, application forms, interview scripts.

1. Public notice.

a. 60-Day Advance Federal Register Notice. Before an agency sends a form (or other collection of information, not contained in a proposed or current rule) to OMB for review, the agency needs to provide 60-day advance notice in the Federal Register, and "otherwise consult[ed] with the members of the public and affected agencies."[312] In this notice, the agency is to solicit comment in the following areas: the need for the information, its practical utility, the

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[309] 5 CFR 1320.13.

[310] 44 U.S.C. 3507(j)(2), as amended by the "Information Technology Management Reform Act of 1996," P.L. 104-106, Section 5605(d).

[311] 5 CFR 1320.5(c)(5).

[312] 44 U.S.C. 3506(c)(2)(A); see 5 CFR 1320.8(d).

accuracy of the agency's burden estimate, and on ways to minimize burden, including through "the use of automated collection techniques or other forms of information technology."[313]

Specifically, as described in Chapter V.C., the agency is have sought public comment to permit the agency to--[314]

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.[315]

b. 30-Day Federal Register Notice. At the end of the 60-day period for seeking the advance public comment, the agency may send the information clearance package to OMB for review. At the same time, the agency needs to notify the public, through a second Federal Register notice that the collection of information was submitted for OMB review.[316]

Specifically, on or before the date of submission to OMB of the information clearance package, the agency is to forward a notice to the Federal Register. An agency needs to provide such notice for requests for approval of new collections, extension of existing collections, and reinstatement of expired collections, whether or not the information collections are in forms or in regulations. A copy of the notice submitted to the Federal Register, together with the date of expected publication, is to be included in the agency's submission to OMB.[317]

(1) Content. The 30-day notice is to--

- state that OMB approval is being sought;

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[313] 44 U.S.C 3507(c)(2)(A)(iv). See Chapter V.C. for a detailed discussion of this Federal Register notice.

[314] 5 CFR 1320.8(d)(1)(i)-(iv).

[315] For a more detailed discussion of the use of information technology as a way to reduce respondent reporting and recordkeeping burden, see Chapter VI.F.

[316] 5 CFR 1320.5(a)(1)(iv)(A).

[317] 5 CFR 1320.10(a).

- direct requests for information, including copies of the proposed collection of information and supporting documentation, to the agency;

- request that comments be submitted to OMB within 30 days of the notice's publication;[318] and

- direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(2) Specific Information Provided. The 30-day Federal Register notice needs at a minimum to contain certain basic information:[319]

- A title for the collection of information;

- A summary of the collection of information;

- A brief description of the need for the information and proposed use of the information;

- A description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;

- An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;[320]

- Notice that comments may be submitted to OMB;[321] and

- If the agency submits a request for emergency approval,[322] the date when OMB approval is requested.

Appendix A contains examples of agency PRA notices published in the Federal Register.

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[318] In other words, this notice needs to invite the public to obtain a copy of collections of information (if not published with the Federal Register notice) from the agency, and to send comments on the proposal to OMB.

[319] 44 U.S.C. 3507(a)(1)(D), 5 CFR 1320.5(a)(1)(iv)(B).

[320] Note that the OMB Form 83-I calls for identifying burden in terms of both "Annual reporting and recordkeeping hour burden" (Question 13) and also "Annual reporting and recordkeeping cost burden" (Question 14). Agencies should include both of these "hour" and "cost" burden estimates in their Federal Register notices. See more detailed discussion in Chapter IV.B.5. and Appendix B.

[321] Also note the OMB regulation at 5 CFR 1320.10(a): "The notice shall direct requests for information, including copies of the proposed collection of information and supporting documentation, to the agency, and shall request that comments be submitted to OMB within 30 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]." For discussion of emergency clearances under 5 CFR 1320.13, see discussion later in this chapter.

[322] See discussion in Chapter VII.I. & J.

c. Information for Respondents. As discussed above in Chapter V.D., the agency is to inform[323] respondents of the reasons the information is being collected; the way in which such information is to be used; the estimated burden; whether responses are voluntary, required to obtain a benefit, or mandatory; and that the respondent is not required to respond to, a collection of information unless it displays a valid OMB control number.[324]

Depending on the nature of the collection of information, this information can be provided in the form, its instructions, the preamble of the regulation containing the collection of information, and/or an appropriate notice in Federal Register.

- In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (*except in an electronic format*)-- the information can be included either on the form, questionnaire or other collection of information, as part of the instructions for such collection, or in a cover letter or memorandum that accompanies the collection of information.

- In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents *in an electronic format*--the information can be included either in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent.[325]

2. OMB Review Period. OMB generally has 60 days once an agency submits an information clearance package (or the 30-day Federal Register notice is published, whichever is later) to take an action.[326] OMB is also to provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision.[327]

3. Potential OMB Actions.

a. Approval. As discussed in Chapters IV.B., V, and VI, OMB needs to determine that the collection of information has been developed in accordance with the procedural steps called for by the PRA and meets the substantive criteria embodied within the PRA.

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[323] For a more general discussion of "inform," see Chapter III.5.

[324] 44 U.S.C. 3506(c)(1)(B); see 5 CFR 1320.8(b)(3).

[325] 5 CFR 1320.8(c)(1)(i) & (ii). Note, also, the provision in 5 CFR 1320.8(c)(1)(iv): "In other cases, and where OMB determines in advance in writing that special circumstances exist, agencies may use other means to inform potential respondents."

[326] 44 U.S.C. 3507(c)(2). See OMB's regulation, at 5 CFR 1320.10(b): "Within 60 days after receipt of the proposed collection of information or publication of the notice under paragraph (a) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available."

[327] 44 U.S.C. 3507(b); 5 CFR 1320.10(b).

If the agency request for clearance is approved, OMB will provide a valid control number to be displayed along with the notice of the legal consequences of failing to display the control number.[328]

OMB Control numbers assigned to approved collections of information are valid for a maximum of three years.[329] To extend the approval period, an agency needs to publish the 60-day advance Federal Register notice,[330] and then resubmit the collection of information and all supporting materials outlined in Section B, above, for OMB review and approval, being certain in the Justification Statement to "include an explanation of how the agency has used the information that it has collected."[331] An agency should submit the information clearance package before the current approval expires to allow sufficient time for the 60-day OMB review period and to reprint collection instruments based on any changes made during OMB review.[332]

b. Instruction for Change. OMB may to instruct the agency to make substantive or material change to a collection of information.[333] Such an instruction generally takes the form of an "approval," with "conditions of clearance." OMB will identify in the remarks section of the Notice of Action the specific changes to the collection of information on which OMB based its approval. Often, OMB has already discussed these changes with the agency and the agency has agreed to make them. These changes can include deletion of part of the collection; substantive modifications to questions; or changes in statistical methods, the collection process, respondent population, frequency, or uses, etc..

If OMB instructs an agency to make a substantive or material change to the proposed collection of information, *the agency may not implement the collection of information unless the modifications have been made* (or the instruction to change has been overridden by an independent regulatory agency). In addition, the provisions of the "public protection" provisions of the PRA and OMB regulation apply.[334]

c. Disapproval. If a proposed collection of information does not meet the substantive or procedural criteria for PRA approval,[335] OMB may disapprove the agency's use of it. Furthermore, OMB may disapprove a collection of information because the agency failed to provide requested information necessary for OMB to determine independently the practical utility, burden, and necessity of the collection. OMB is to make that decision publicly available,

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[328] See general discussion of the "public protection" provision in Chapter III.

[329] 44 U.S.C. 3507(g); 5 CFR 1320.10(b).

[330] 5 CFR 1320.10(e)(1)(I).

[331] 5 CFR 1320.10(e)(1)(ii).

[332] 5 CFR 1320.10(e)(1)(ii).

[333] 44 U.S.C. 3507(e)(1); 5 CFR 1320.10(b).

[334] See discussion in Chapter III.

[335] See discussion in Chapter IV.

and include an explanation of the reasons for that decision.[336] The reason(s) for disapproval will be specified in remarks in the Notice of Action sent to the agency.

If OMB disapproves the collection of information, OMB may also identify in the remarks section of the Notice of Action the specific changes necessary for approval upon resubmission. In cases where the disapproval is based on failure to meet the PRA's substantive criteria, but the agency has fully complied with the PRA's public notice requirements described in this Chapter and in Chapter V.C., the agency may resubmit the package without soliciting public comment again.

An independent regulatory agency may override a disapproval of a collection of information.[337] Disapproved information collections are subject to the "public protection" provisions of the PRA[338] and OMB regulation[339] unless the disapproval is overridden by an independent regulatory agency.

d. Disapproval and Continue. OMB may determine that a proposed collection of information does not warrant approval, but that the collection of information that was previously approved and which continues to have a valid OMB control number merits approval for continued use. For example, an agency may propose amending an existing, previously approved collection of information in ways that do not warrant approval. In such circumstances, OMB may send the agency a decision to "disapprove and continue." Such an action, which needs to be explained in the remarks section of the Notice of Action, indicates that the approval for the previously approved collection of information is continued through the current expiration date, and that the proposed collection of information has been disapproved.

An agency needs to carefully distinguish an OMB action of "disapproval" from an OMB action of "disapprove and continue." Currently valid collections of information that are submitted for reapproval with or without a change become "bootleg" or unapproved collections immediately upon disapproval by OMB unless the OMB action is "disapprove and continue." The "public protection" provision applies to all previously approved collections that have been resubmitted and disapproved without the "continue" notation even though the original approval would have continued for an additional period of time.

e. OMB Default Approval. If OMB does not complete its review of a collection of information within the 60-day time frame, a default approval may occur. In such circumstances, the agency may request OMB approval and OMB is then to assign a currently valid control number valid for not more than one year.[340]

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[336] 44 U.S.C. 3507(e)(1); 5 CFR 1320.10(b).

[337] 5 CFR 1320.15. See detailed discussion at Chapter VII.Q.

[338] 44 U.S.C. 3512. See discussion in Chapter III.

[339] 5 CFR 1320.6.

[340] 44 U.S.C. 3507(c)(3); 5 CFR 1320.10(c).

f. Other. OMB may return a collection to an agency as improperly submitted if it fails to meet the procedural requirements of the Act. In addition, and agency may choose to withdraw a collection from review. See discussion of these issues later in this chapter.

F. WHAT IS THE CLEARANCE PROCESS FOR COLLECTIONS OF INFORMATION IN PROPOSED RULES?

The information clearance package for any collection of information contained in a proposed rule is to be submitted to OMB on or before the day on which the NPRM is published in the Federal Register.[341] The information clearance package is to include a copy of the proposed regulation and preamble."[342]

If the agency fails to submit information clearance package to OMB on or before the date on which the NPRM is published, then OMB may disapprove the collection of information. The disapproval is to occur after 30 days, but within 60 days, of receipt of the submission.[343] If an agency fails even to submit a collection of information contained in a proposed rule, then OMB may disapprove it at any time.

1. Public notice. A proposed regulation containing a collection of information is to include in the preamble of the Notice of Proposed Rulemaking (NPRM) a notification that OMB review has been requested and is to direct public comments to the OMB reviewer. Publication of this information in the NPRM serves as the required public notice. If the agency resubmits the collection of information to OMB at the final rulemaking stage, and has complied with the requirements of the PRA at the proposed stage, a second Federal Register notice is not required.

a. Content of Federal Register Notice. The notice in the preamble to the NPRM is to include both the information required in the "60-day advance Federal Register notice" and also in the "30-day simultaneous Federal Register notice."[344] The notice is to direct comments to Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for [name of agency], and indicate that comments can be received for between 30 days and the date of the close of comment period for the rule under the Administrative Procedure Act (often 60 days), but that comments to OMB will be most useful if received by OMB within 30 days of publication.

Appendix A contains examples of agency PRA notices published in the Federal Register.

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[341] 44 U.S.C. 3507(d)(1)(A); 5 CFR 1320.11(b).

[342] 5 CFR 1320.11(b).

[343] 5 CFR 1320.11(d).

[344] See OMB's regulation, at 5 CFR 1320.11(a): "The agency shall include, in accordance with the requirements in § 1320.5(a)(1)(iv) and § 1320.8(d)(1) and (3), in the preamble to the Notice of Proposed Rulemaking a statement that the collections of information contained in the proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the Act. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]."

b. Information for Respondents. The agency is to inform[345] respondents of the same information as discussed in Section D.1.c. above and described in greater detail in Chapter V.D.[346] This information may be provided to respondents in a variety of ways.

In the case of collections of information published in regulations, guidelines, and other issuances in the Federal Register, the information can be published in the Federal Register (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text to the final rule, or in a technical amendment to the final rule, or in a separate notice announcing OMB approval of the collection of information).[347]

2. OMB Review Period. OMB has 60 days from the publication of the proposed rule to either approve or file public comments on the collections of information contained in the proposed rule.[348] OMB is also to provide at least 30 days for public comment after receipt of the proposed collection of information before approving or filing its public comments. The agency is to include any OMB comments in the agency's rulemaking record.[349]

3. Potential OMB Actions.

a. Approval. As discussed in Chapters IV.B., V, and VI, OMB will determine that the collection of information has been developed in accordance with the procedural steps called for by the PRA and meets the substantive criteria embodied within the PRA.

If OMB approves the collection of information at the NPRM stage, the collection of information is given an OMB approval number. An OMB approval provides the agency the authority to collect the information and to impose the estimated burden.

An agency must display the valid OMB control number along with the notice of the legal consequences of failing to display the control number.[350]

b. Failure to approve and submit comments. If OMB decides not to approve the collection of information because it does not conform with PRA standards, OMB is to submit comments to the agency within 60 days from the date of publication of the NPRM.[351] OMB may, in its comments, suggest modifications that would lead to its subsequent approval.

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[345] For a more general discussion of "inform," see Chapter III.5.

[346] 5 CFR 1320.8(b)(3).

[347] 5 CFR 1320.8(c)(1)(iii).

[348] 44 U.S.C. 3507(d)(3); 5 CFR 1320.11(c).

[349] 5 CFR 1320.11(c): "The OMB 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."

[350] For a discussion of the "public protection" provision, see Chapter III.

[351] 5 CFR 1320.11(c).

If OMB does not approve and instead files comments (in the form of a Notice of Action) the agency is to resubmit the collection of information for review at the final stage of rulemaking.[352] In this case, further public notice and opportunity for comment is not required, although OMB may direct the agency to publish a notice in the Federal Register notifying the public of OMB review.

c. Disapproval. OMB may disapprove a collection of information at the NPRM stage of rulemaking only if the agency did not submit the proposal for review on or before the date of Federal Register publication.[353]

OMB, however, will review collections of information requirements that are submitted for review within a "few days" after Federal Register publication and will either (1) approve or (2) not approve and comment on them.[354] This policy has been established to accommodate mail and other delays an agency may experience in transmitting materials to OMB. It operates only on the proviso that the agency understands that the 60-day review period commences with the date of submission and the agency does not make a practice of submitting after publication. If either of these criteria are not met, OMB may disapprove the proposed collection of information. In this case, the agency may resubmit the proposed collection of information at the final stage of rulemaking.[355]

d. Default Approval. If the agency submits the information clearance package on or before the date of publication, and if OMB does not file public comments or does not approve the collection of information in the NPRM without conditions within 60 days after publication of the NPRM, a default approval may occur.[356] In such circumstances, the agency may request OMB approval. OMB will then assign a currently valid control number prior to publication of the final rule.

4. OMB Review of the Final Rule. Collections of information approved at the NPRM stage that are unmodified (i.e., exactly the same) at the final stage of rulemaking[357] need not be resubmitted for OMB review at the final stage of rulemaking. This situation does not includes the situation in which OMB filed comment on, or its approval remarks, imposed conditions on approval.

Conversely, any modification to the collection of information between the NPRM and final stages of rulemaking is to be approved by OMB, even if the modification conforms exactly to a condition stated in an OMB comment at the NPRM stage. In addition, collections of information contained in an NPRM that OMB commented on at the NPRM stage is to be approved at the

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[352] 5 CFR 1320.11(h).
[353] 5 CFR 1320.11(d).
[354] 5 CFR 1320.11(d).
[355] 5 CFR 1320.11(h).
[356] 44 U.S.C. 3507(d)(1)(B); 5 CFR 1320.11(g).
[357] 5 CFR 1320.11(g).

final rule stage before they are implemented. To obtain such approval, the agency needs to resubmit the collection of information for review on or before the date of publication of the final rule.[358]

a. Information for Respondents. If the agency follows the proper public notice procedures at the proposed rule stage, the agency will not be required to notify the public again at the final rule stage. However, to inform OMB's action, OMB may request that an agency provides notice to generate additional public comment to inform OMB's action on the collection of information.

- If an agency publishes a final regulation containing a collection of information that has not received approval, or does not display a currently valid OMB control number and inform respondents that they are not required to respond to the collection of information unless it displays a currently valid OMB control number, then the agency must stay the effective date of the collection of information until it receives OMB approval. The agency must also publish a notice thereof in the Federal Register[359] that displays the control number, and informs respondents of the legal significance of failure to display the OMB control number.[360]

- If an agency's initial request for approval of an information collection contained in a regulation comes after publication of a final rule (e.g., in the case of an "interim final" or "direct final" rule, or where the agency did not identify the collection as subject to the PRA at the NPRM stage), then the agency has two choices. It may either repropose the section of the rule containing the information collection according to the procedures discussed in this section, or follow the procedures discussed regarding information collections contained in current rules (see Section F below).

b. Review Period. OMB has 60 days from the publication of a final rule in which to take an action.[361]

c. Potential OMB Actions.

(1) Approval. If OMB approves the collection of information, the agency must display the valid control number along with the notice of the legal consequences of failing to display the control number.[362]

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[358] 5 CFR 1320.11(h).

[359] 5 CFR 1320.11(k).

[360] As OMB states in its regulation, 5 CFR 1320.11(l): "As provided in § 1320.5(b) and § 1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number."

[361] 5 CFR 1320.11(h).

[362] For discussion of the "public protection" provision, see Chapter III.

Once the agency receives an OMB approval, the agency is to include either in the preamble of the final rule or in a separate notice published in the Federal Register, a notice of this approval[363] that displays the control number and informs respondents of the legal significance of failure to display the OMB control number.[364]

(2) Instruction for Change. OMB may instruct an agency to make a substantive or material change to a collection of information if--

- The agency did not submit the information clearance package for OMB review on or before the date the NPRM was published in the Federal Register,[365]

- The collection of information in the final rule is substantially different from that contained in the NPRM and the agency did not resubmit it with adequate justification at least 60 days prior to Federal Register publication of the final rule,[366] or

- The agency response to OMB comments filed with respect to the NPRM submission is unreasonable and the collection of information is not necessary for the proper performance of the agency function.[367]

If OMB instructs an agency to make a substantive or material change to a collection of information in a final rule, the agency is to notify the public by publication in the Federal Register of the instruction.[368] At that point, OMB will provide an approval that is long enough to permit agency consideration of the needed changes and resubmission of the amended collection of information for OMB review.[369]

(3) Disapproval. OMB may disapprove a collection of information contained in the final regulation published in a notice and comment rulemaking if--

- The agency did not submit the information clearance package for OMB review on or before the date the NPRM containing the collection of information was published in the Federal Register,[370]

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[363] 5 CFR 1320.11(k).

[364] As OMB states in its regulation, 5 CFR 1320.11(l): "As provided in § 1320.5(b) and § 1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number."

[365] 5 CFR 1320.11(h)(1).

[366] 5 CFR 1320.11(h)(2).

[367] 5 CFR 1320.11(h)(3).

[368] 5 CFR 1320.11(k). See 5 CFR 1320.12(f).

[369] 5 CFR 1320.12(f)(1)(iii).

[370] 5 CFR 1320.11(h)(1).

- The collection of information in the final rule is substantially different from that contained in the NPRM and the agency had not resubmitted it with adequate justification at least 60 days prior to Federal Register publication of the final rule,[371] or

- The agency response to OMB comments filed with respect to the NPRM submission is unreasonable and the collection of information is not necessary for the proper performance of the agency function.[372]

If OMB disapproves a collection of information in a final rule, the agency is to notify the public by publication in the Federal Register of the disapproval.[373]

(4) OMB Default Approval. A default may occur if OMB fails to approve, disapprove, or instruct the agency to change the collection of information within 60 days of publication of the final rule in the Federal Register.[374] In such circumstances, the agency may request OMB approval, and OMB will assign a currently valid control number.[375]

G. WHAT IS THE CLEARANCE PROCESS FOR COLLECTIONS OF INFORMATION IN CURRENT RULES?

The clearance process for collections of information in current rules is very similar to the process for forms.

1. Public notice.

a. 60-Day Advance Federal Register Notice. Before an agency sends a collection of information contained in a current rule to OMB for review and approval, the agency is to provide 60-day advance notice in the Federal Register.[376] (See Section E. above.)

b. 30-Day Simultaneous Federal Register Notice. At the end of the 60-day advance period for public comment, the agency may send the information clearance package to OMB for review.

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[371] 5 CFR 1320.11(h)(2).

[372] 5 CFR 1320.11(h)(3).

[373] 5 CFR 1320.11(k). Note the effect of this disapproval, as stated in OMB's regulation: "The failure to display a currently valid OMB control number for a collection of information contained in a current rule, or the failure to inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number, does not, as a legal matter, rescind or amend the rule; however, such 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 has been disapproved, and that therefore the portion of the rule containing the collection of information has no legal force and effect and the public protection provisions of 44 U.S.C. 3512 apply." See 5 CFR 1320.12(h)(2).

[374] 5 CFR 1320.11(i).

[375] 5 CFR 1320.11(i).

[376] 5 CFR 1302.12(a)(1).

At the same time, the agency is to notify the public, through a second Federal Register notice, that the collection of information was submitted for OMB review.[377] This 30-day Federal Register notice is to contain the same information as described in Section E, above.[378]

c. Information for Respondents. The agency is to inform[379] respondents of the same information as discussed above and described in greater detail in Chapter V.D.[380] This information may be provided to respondents in a variety of ways.

In the case of collections of information published in regulations, guidelines, and other issuances in the Federal Register, such information can be published in the Federal Register (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text to the final rule, or in a technical amendment to the final rule, or in a separate notice announcing OMB approval of the collection of information).[381]

2. OMB Review Period. OMB generally has 60 days once an agency submits an information clearance package (or the 30-day Federal Register notice is published, whichever is later) to take action.[382] OMB is also to allow at least 30 days for public comment after receipt of the proposed collection of information before making its decision.[383]

3. Potential OMB Actions.

a. Approval. As discussed in Chapters IV.B., V, and VI, OMB is to determine that the collection of information has been developed in accordance with the procedural steps called for by the PRA and meets the substantive criteria embodied within the PRA.

If the agency request for clearance is approved, OMB will provide a valid control number to be displayed along with the notice of the legal consequences of failing to display the control number.[384]

OMB Control numbers assigned to approved collections of information are valid for a maximum of three years.[385] To extend the approval period, an agency is to resubmit the collection of

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[377] 5 CFR 1320.12(c).

[378] 5 CFR 1320.12(c).

[379] For a general discussion of "inform," see Chapter III.5.

[380] 5 CFR 1320.8(b)(3).

[381] 5 CFR 1320.8(c)(1)(iii).

[382] See OMB's regulation, at 5 CFR 1320.12(d): "(d) Within 60 days after receipt of the collection of information or publication of the notice under paragraph (c) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available."

[383] 44 U.S.C. 3507(b); 5 CFR 1320.12(d).

[384] For a more general discussion of the "public protection" provision, see Chapter III.

[385] 44 U.S.C. 3507(g); 5 CFR 1320.12(e)(1).

information for OMB review and approval by carrying out the procedural steps described in Section E., above.

b. "Disapproval and Continue" or "Instruction for Change." If OMB disapproves a collection of information contained in an existing rule, or instructs the agency to make a substantive or material change to such a collection,[386] OMB is to extend the existing approval long enough for the agency to consider the needed changes and resubmit the amended collection of information for OMB review.[387] The steps in this process and the associated time frames are as follows--

(1) OMB will publish an explanation of its action to disapprove or instruct the agency to change the collection in the Federal Register.[388]

(2) OMB will instruct the agency to undertake a rulemaking within a reasonable time--allowing the agency time to consider the changes to the collection of information contained in the rule and to submit the collection of information to OMB for review.[389]

If the agency within a reasonable period of time fails to submit the collection of information for review, OMB may disapprove the collection in whole or in part.[390]

(3) The agency is also--within a reasonable period of time not to exceed 120 days--to undertake steps, i.e., the administrative rulemaking procedures, necessary to rescind or amend the collection of information. The agency is also to notify the public of its actions through the Federal Register.[391]

If the agency within a reasonable period of time fails to initiate procedures to change the collection of information, OMB may disapprove the collection of information in whole or in part.[392]

Revisions without Notice and Comment. If the agency does not follow notice and comment rulemaking procedures to rescind or amend the collection of information in a current regulation, the agency is to submit the proposed rulemaking for OMB review under the provisions of the PRA and OMB regulations that apply to

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[386] 5 CFR 1320.12(f)(1).

[387] 5 CFR 1320.12(f)(1)(iii).

[388] 5 CFR 1320.12(f)(1)(i).

[389] 5 CFR 1320.12(f)(1)(ii).

[390] 5 CFR 1320.12(g)(1).

[391] 5 CFR 1320.12(f)(2): "Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, change, or rescission of such collections of information."

[392] 5 CFR 1320.12(g).

collections of information not in proposed or current rules.[393] The procedures, possible OMB actions, and time frames for these reviews are described above.

Revisions with Notice and Comment. If the agency employs notice and comment rulemaking to rescind or amend the collection of information, the agency is to submit the proposed rulemaking for OMB review under the provisions of the PRA and OMB regulations that apply to proposed rules.[394] The procedures, possible OMB actions, and time frames for these reviews are described below.

(4) Within a reasonable time, the agency is to publish a final rule continuing 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.

If within a reasonable period of time the agency fails to complete the rulemaking with the necessary changes or to amend or rescind the collection of information, OMB may disapprove the collection of information in whole or in part.[395]

(5) As described above, if an agency fails to comply with the applicable procedures to rescind or amend a collection of information in a current rule, then OMB has authority, in whole or in part, to disapprove the collection of information. As stated in OMB's regulation:[396]

> "(1) Upon disapproval by OMB of a collection of information subject to this section, ... the OMB control number assigned to such collection of information 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 contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting information collection instruments directed at the same collection of information and therefore constituting essentially the same collection of information.
>
> "(2) The failure to display a currently valid OMB control number for a collection of information contained in a current rule, or the failure to inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number, does not, as a legal matter, rescind or amend the rule; however, such 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 has been disapproved, and that

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393 5 CFR 1320.10.

394 5 CFR 1320.11; 5 CFR 1320.12(f)(2).

395 5 CFR 1320.12(g)(3).

396 5 CFR 1320.12(h).

therefore the portion of the rule containing the collection of information has no legal force and effect and the public protection provisions of 44 U.S.C. 3512 apply."

c. OMB Default Approval. If OMB does not complete its review of a collection of information within the 60-day time frame, a default approval may occur. In such circumstances, the agency may request OMB approval and OMB is then to assign a currently valid control number valid for not more than one year.[397]

H. HOW DO COLLECTIONS OF INFORMATION CONTAINED IN PROPOSED RULES INTERACT WITH CURRENTLY-APPROVED COLLECTIONS OF INFORMATION CONTAINED IN CURRENT RULES?

When OMB approves a collection of information contained in a proposed regulation, any existing, related collections of information in a current rule remain in force until the new collections of information take effect through completion of the regulatory amendments.

As a basic matter, if an information collection in a proposed rule is going to change an information collection in a current rule, the agency should take care to assure that the existing regulatory information collection remains in effect while the agency is conducting the regulatory amendment.

It is OMB practice to assure that this happens. When OMB approves a collection of information in a proposed regulation,[398] OMB allows the related information in the current regulation to remain in effect until the approved, new or revised collection of information in the regulatory amendment takes effect, unless otherwise noted in the conditions of clearance. Similarly, even when OMB fails to approve a collection of information in a proposed regulation, but instead files public comments,[399] OMB ensures that the related collection of information in the current regulation remains approved for at least as long as it takes to resolve the issue.

On the other hand, as noted above, if OMB notifies an agency of a decision for the agency to initiate regulatory proposals to change a collection of information in a current rule,[400] and if the agency refuses within a reasonable time to do so, OMB may then disapprove this collection of information.[401]

I. WHEN MAY AN AGENCY SUBMIT A REQUEST FOR EMERGENCY CLEARANCE?

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[397] 44 U.S.C. 3507(c)(3); 5 CFR 1320.10(e)(2).

[398] 5 CFR 1320.11.

[399] 5 CFR 1320.11(c).

[400] 5 CFR 1320.12(c) & (f).

[401] 5 CFR 1320.12(g)(2).

An agency head or the Chief Information Officer (CIO) (or their designee) may request emergency processing of a collection of information under the following circumstances--

- When the collection of information--

  --is needed prior to the expiration of time periods established under this Part; and

  --is essential to the mission of the agency; and

- When the agency cannot reasonably comply with the normal clearance procedures under this Part because--

  --public harm is reasonably likely to result if normal clearance procedures are followed;[402]

  --an unanticipated event has occurred; or[403]

  --the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.[404]

J. WHAT IS THE PROCESS FOR REQUESTING AN EMERGENCY CLEARANCE?

If an agency head or the CIO (or their designee(requests emergency processing of a collection of information, the request is to specify when OMB should take an action.[405] An OMB approval, and the Control numbers assigned to collections of information approved under the "emergency processing" procedures can be valid for not more than 180 days from the date the agency requested approval.[406]

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[402] Public harm would be prevented through an emergency collection if, for example, strategies to combat a public health epidemic depend on information in a survey that needs to be fielded immediately, or if limits on applications for air transit licenses need to be put in place to protect against the immediate threat of terrorism.

[403] For example, if a natural disaster has led to the need to provide benefits quickly to the victims.

[404] For example, if a new statute is passed that requires implementation of an information collection within 60 days (which clearly is shorter than the time frames called for under the PRA); if seeking public comment would compromise the collection (as with an investigation into fraud), or if an agency needs the information immediately to make a critical policy decision.

[405] 44 U.S.C. 3507(j)(1); 5 CFR 1320.13 and 5 CFR 1320.13(b).

[406] The "Paperwork Reduction Act of 1995," P.L. 104-13, Section 2, 44 U.S.C. 3507(j)(2) authorized emergency approvals of up to 90 days. The "Information Technology Management Reform Act of 1996," P.L. 104-106, Section 5605(d) amended 44 U.S.C. 3507(j)(2) to authorize emergency approvals of up to 180 days. This provision took effect on August 8, 1996.

Each request for emergency processing needs to be accompanied by a written determination that the circumstances specified in Section I., above, exist.[407] In addition, the agency is to 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.[408]

1. Public notice. The agency is also to publish in the Federal Register a notice that the emergency clearance request has been submitted to OMB for review (unless such notice is waived or modified by OMB).[409] This notice is to include a statement that the agency is requesting emergency processing within a specified time period.[410] Unless otherwise agreed to by OMB, the agency should solicit public comments on the emergency collection for all of the time period specified for OMB review.

2. Potential OMB Actions. OMB will approve or disapprove an emergency collection of information within the time period stated by the agency, provided that such time period is consistent with the purposes of the PRA.[411] An inconsistent time period is one that does not permit OMB to evaluate independently whether the proposed collection of information:

- Is necessary for the proper performance of the agency functions;
- Imposes unnecessary or excessive burden;
- Unnecessarily duplicates other available information;
- Maximizes practical utility; and
- Otherwise meets the substantive criteria embodied within the PRA.[412]

OMB may ask the agency to extend the review period if OMB cannot determine independently, within the time stated by the agency, whether these criteria have been met. If the agency concurs, the agency should so indicate before the original specified time period has lapsed. If the agency declines to extend the original specific time period, OMB may disapprove the proposed collection of information on the ground that the justification and other information provided by the agency is insufficient for OMB to determine whether the approval criteria have been met.

K. WHAT OTHER INNOVATIVE STRATEGIES FOR CLEARANCE ARE AVAILABLE?.

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[407] 5 CFR 1320.13(a).

[408] 5 CFR 1320.13(c).

[409] This notice is the one required by 44 U.S.C. 3507(a)(1)(D); 5 CFR 1320.5(a)(1)(iv).

[410] This is to be the same time period that the agency states to OMB. 5 CFR 1320.13(d).

[411] 5 CFR 1320.13(e).

[412] For discussion, see Chapters IV & VI.

The OMB implementing regulation defines "collection of information" to include "plans" to collect information.[413] For many years OMB has supported innovative strategies or "plans" for managing and reviewing collections of information more efficiently, as long as those strategies advance the objectives of the PRA.

Similarly, in cooperation with Federal agencies, OMB has devised various methods to streamline the paperwork clearance process. The most successful of these methods has been "bundled," "contingency," and "generic" clearances.

- The "bundled clearance" involves combining many similar data collections in a single clearance package. Such bundled packages have been negotiated with agencies in those situations for which combined review would facilitate both OMB and agency review (e.g., if similar data collections present common clearance issues).

- A "contingency clearance" is an approved plan for a data collection that is justified by specific events--the plan is approved in advance of the triggering event and can be implemented immediately if the triggering event takes place (e.g., a survey to track consequences of a strike). Advance review and approval permits agencies to respond quickly to the need for data.

- A "generic clearance" also involves advance approval, but of a well-defined class of low-burden data collections that are not fully documented until they are actually used. A generic clearance typically includes a set of agreements negotiated between the sponsoring agency and OMB, establishing data collection methods and usage, a burden cap, a periodic reporting requirement to update the OMB docket, and a commitment by OMB to review any specific application quickly.[414]

A more detailed discussion of these innovative strategies may be found in the "Generic Clearances" and "Customer Survey" sections of Appendix C.

L. CAN AN AGENCY WITHDRAW AN INFORMATION CLEARANCE PACKAGE?

If, during the course of OMB review of a information clearance package, the agency indicates that it may need to take additional time to provide information requested by OMB, the agency should consider withdrawing the proposed collection from review. The Notice of Action will indicate why the agency withdrew the collection. In addition, OMB may also order the collection withdrawn if it was sent improperly (e.g., if all of the requirements for submission were not met).

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[413] 5 CFR 1320.3(c)(1).

[414] See Section 5 of the October, 1993, Resource Manual for Customer Surveys, issued by the Statistical Policy Office, Office of Management and Budget.

Withdrawals generally result from one of three scenarios--

- The agency reconsiders whether to conduct the collection.
- The request for review is sufficiently incomplete so that it can not be completed within a reasonable period of time.
- The agency requires more time to address questions or issues raised by OMB during its review.

If an agency withdraws a collection, but has followed the public notice requirements of the PRA, the agency may resubmit the package for OMB review without seeking public comment again.

Special rules exist for withdrawals of collections of information contained in proposed or final regulations:[415]

1. NPRM Stage. Collections of information submitted for review at the NPRM stage of rulemaking may not be withdrawn by the agency unless the agency also publishes a Federal Register notice withdrawing the proposed rulemaking, or unless the agency's initial submission was made in error. OMB may only return such collections of information if the agency fails to follow the procedural requirements for submission under the PRA (see below). If required information is not provided by the agency on a timely basis, OMB is to determine that the collection is not subject to OMB review, approve the collection, or file a comment (in the form of a Notice of Action). Under no circumstances may OMB return a collection of information at the NPRM stage without approving or commenting on the proposal.[416]

2. Final Rule Stage. There is no basis in the statute or regulation for the agency to withdraw from OMB review a collection of information contained in a final rule that has been published in the Federal Register, unless the agency's initial submission was made in error. The agency may, however, choose to withdraw the collection of information from review and simultaneously follow any applicable administrative provisions for suspension or withdrawal of the final regulation. OMB may not, for any reason, return a collection of information that is contained in a final regulation, except if the agency fails to comply with the procedural requirements for submission under the PRA (see below).

M. CAN OMB RETURN AN IMPROPERLY SUBMITTED INFORMATION CLEARANCE PACKAGE?

[415] Specifically, those subject to 5 CFR 1320.11.

[416] Collections of information at the NPRM stage and at the final state of rulemaking are reviewed under the provisions of 44 U.S.C. 3507(d) and 5 CFR 1320.11.

OMB will consider returning a information clearance package (other than for emergency processing requests) that does not meet the procedural requirements of the PRA. For example, if the public has not, or is not being provided, Federal Register notice of the OMB review, OMB may return the information clearance package as improperly submitted. If a request is returned, OMB will identify in its remarks the reason for the return. An agency needs to fully comply with the procedural requirements identified prior to resubmitting the information clearance package for review.

N. CAN AN AGENCY REQUEST WHETHER COLLECTIONS OF INFORMATION ARE SUBJECT TO OMB REVIEW?

An agency may ask OMB to determine that a collection of information in a form or current regulation is not subject to OMB review.[417] This is generally done informally. If OMB agrees, the review may result in a Notice of Action that indicates that the collection of information is "not subject" and briefly explains the basis for that determination.

O. CAN AN AGENCY REQUEST RECONSIDERATION OF AN INSTRUCTION FOR CHANGE OR DISAPPROVAL?

An agency may appeal OMB's decision to either instruct the agency to change or disapprove a collection of information. An agency should first contact its OMB Desk Officer about an appeal to determine whether a resolution can be easily reached. If this cannot be achieved, the agency's CIO should write to the Deputy Administrator of the Office of Information and Regulatory Affairs in OMB explaining the basis for his or her appeal, and how the content of appeal is consistent with the substantive and procedural provisions of the PRA and its implementing regulations. OMB will review the request, and may meet with relevant agency officials prior to making a decision on the appeal.

If OMB decides to grant the agency's appeal, the agency may need to resubmit the collection of information for formal review to implement that decision. If the agency complied with the PRA's public notice requirements prior to the initial submission, then the agency need not seek public comment again.

P. IS OMB ABLE TO REOPEN REVIEWS AND RESCIND EXISTING APPROVALS?

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[417] For discussion, see Chapter II.B.

OMB may reopen its review at any time prior to the expiration of an OMB approval of a form[418] or collection of information in a current rule.[419] OMB may reopen review in the following kinds of situation--

- If OMB believes that relevant circumstances have changed.
- If new information is received that indicates that the collection of information is not, in fact, consistent with the provisions of the PRA.
- If OMB receives information indicating that the agency is collecting information in a manner different from that previously approved.
- If the burden estimates provided by the agency were substantially inaccurate.

An agency is to submit an information clearance package containing the collection of information for review upon notification that OMB has reopened the review. However, the agency may continue the collection of this information while the review is underway.

After consulting with the agency, OMB may also stay the effectiveness of its prior approval of a collection of information that is not specifically required by agency rule.[420] If OMB does so, the agency is to discontinue the collection of information and publish a notice in the Federal Register to that effect. The "public protection" provisions of the PRA apply to such stayed collections of information. However, in the case of a collection of information that is contained in a current rule, OMB may not stay the effectiveness of its prior approval until OMB has completed the full process of review.[421]

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[418] See 5 CFR 1320.10(f): "Prior to the expiration of OMB's approval of a collection of information, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this Part."

[419] See 5 CFR 1320.12(i): "Prior to the expiration of OMB's approval of a collection of information in a current rule, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this Part."

[420] See 5 CFR 1320.10(g): "For good cause, after consultation with the agency, OMB may stay the effectiveness of its prior approval of any collection of information that is not specifically required by agency rule; in such case, the agency shall cease conducting or sponsoring such collection of information while the submission is pending, and shall publish a notice in the Federal Register to that effect."

[421] See 5 CFR 1320.12(i).

Q. IS AN INDEPENDENT REGULATORY AGENCY ABLE TO OVERRIDE AN OMB DISAPPROVAL?

Yes. An independent regulatory agency may override an OMB disapproval, instruction to make a material or substantive change to, or stay of the effectiveness of OMB approval of, any collection of information of such agency.[422] For this purpose, the PRA defines an independent regulatory agency as one that "is administered by 2 or more members of a commission, board, or similar body".[423]

The independent regulatory agency is to certify its vote to override to OMB, and explain in writing its reasons for exercising its override authority. Upon receipt of a certification of the override, OMB will provide a control number for the collection of information, valid for the length of time requested by the independent regulatory agency, up to three years.[424] For the override to become effective, the agency is to display the OMB control on the collection of information and inform respondents that without the control number the collection of information is unenforceable.[425]

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[422] 5 CFR 1320.15(a).

[423] 44 U.S.C. 3507(f)(1); 5 CFR 1320.15(a). See 44 U.S.C. 3502(5); 5 CFR 1320.3(g).

[424] 5 CFR 1320.15(b).

[425] 5 CFR 1320.(b).

CHAPTER VIII. HOW IS AN AGENCY ABLE TO APPROVE ITS OWN COLLECTION OF INFORMATION?

This chapter describes the procedures and principles under which OMB may delegate authority to an agency to review and approve its own collections of information under the PRA.

Delegation provides the agency's CIO or the agency head with the authority, in place of OMB, to review and act on proposed collections of information. Agencies have been implementing the PRA and its predecessors for 55 years. Delegation of the approval authority from OMB to an agency is an acknowledgment that the agency has met, and is able to continue to meet, the spirit and substance of the PRA.

A. CRITERIA FOR DELEGATION

The PRA[426] gives OMB discretionary authority to delegate OMB's paperwork review and approval authority to an agency's CIO,[427] On the same conditions, OMB may also delegate this authority to the head of an agency.[428] For OMB to decide to delegate the paperwork review function to an agency, the agency needs to demonstrate that it can satisfy specific delegation criteria:[429]

1. The agency review process must be independent from program responsibility. The potential delegatee must maintain a paperwork review mechanism staffed with personnel outside the structure of program offices which originate paperwork requests. In addition, decisions concerning information collections must be made by the CIO or the agency head.

2. The agency review office must have sufficient resources to carry out paperwork responsibilities. A potential delegatee must dedicate staff and other resources from all agency divisions to its paperwork review process. This assures that all collections are properly reviewed within the agency and that the agency avoids duplications of collection.

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[426] 44 U.S.C. 3507(i)(1).

[427] The title given this officer in the "Paperwork Reduction Act of 1995," P.L. 104-13, at 44 U.S.C. 3506(a), is "senior official." This title was changed to "Chief Information Officer" in the "Information Technology Management Reform Act of 1996," P.L. 104-106, Section 5125(a), through amendments to 44 U.S.C. 3506(a) & (c)(1). P.L. 104-106 did not change the title "senior official" to "Chief Information Officer" as it is used in 44 U.S.C. 3507(i)(1). Because of the cross-reference in 44 U.S.C. 3507(i)(1) back to 44 U.S.C. 3506(a), however, it is clear that the "senior official" is meant to be entitled "Chief Information Officer". The failure to change the title "senior official" to "Chief Information Officer" in 44 U.S.C. 3507(i)(1) appears to have been an oversight.

[428] 5 CFR 1320.16(b). See 5 CFR 1320.7(a) & (b). For a discussion of the reasons that the agency head may not want to delegate PRA review authority to the Chief Information Officer (e.g., out of concern for the relationship of the agency head with the agency's Inspector General), see 60 Fed. Reg 44982 (August 29, 1995).

[429] 5 CFR 1320.16(b).

3. The agency review office must evaluate fairly, using the statutory standards,[430] whether the proposed collections of information should be approved. A potential delegatee must demonstrate a record of low disapproval rates as evidence of the fairness and effectiveness of the agency's information collection review process.

4. The agency has to demonstrate evidence of successful performance of paperwork review activities. A potential delegatee must (1) show significant reductions in paperwork burden each fiscal year, as recorded through the Information Collection Budget process; (2) demonstrate superior efforts in selecting programmatic areas and defining agency-wide strategies for information resources management; and (3) display a historical record of successful performance of the paperwork review process, as reflected in the number and significance of PRA violations committed.

Upon determining that the agency satisfies these criteria, OMB publishes a notice of proposed rulemaking in the Federal Register.[431] The Federal Register notice will provide the basis for the proposed delegation and open the record for comment. After the prescribed comment period has closed, OMB will decide whether to proceed with the delegation.

A delegation under this section does not divest OMB of oversight authority. OMB may, without revoking the delegation, review any information collection when it "determines that circumstances warrant such a review."[432] In addition, OMB may review the performance of the delegate and if necessary rescind the delegation.[433]

B. WHAT AUTHORITY CAN BE DELEGATED?

OMB may delegate authority all[434] or part of an agency's information collection activities.[435] OMB has interpreted this to mean that delegations may be granted to an agency even if only part of the agency's information collection function is within the statutory authority of the CIO or

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[430] For example, all collections of information approved by an agency with delegated approval authority need to display the OMB control number on the collection of information and inform respondents that without the control number the collection of information is unenforceable. In addition, "[i]n acting for the [OMB] Director, any official to whom approval authority has been delegated under [the PRA] shall comply fully with the rules and regulations promulgated by the [OMB] Director." 44 U.S.C. 3507(i)(2).

[431] 44 U.S.C. 3507(i)(1).

[432] 44 U.S.C. 3507(i)(2); 5 CFR 1320.16(c).

[433] 44 U.S.C. 3507(i)(2); 5 CFR 1320.16(c).

[434] For example, the OMB delegation to the Federal Reserve Board, 5 CFR 1320.16(d)(1), Appendix A.1. (For the underlying rulemaking, see 49 Fed. Reg. 12180 (March 28, 1984); 49 Fed. Reg. 20792 (May 16, 1984).)

[435] OMB may delegate "authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes." 44 U.S.C. 3507(i)(1). For example, OMB has delegated authority to review "currently valid (OMB-approved) collections of information ... that have a total annual burden of 5,000 hours or less and a burden of less than 500 hours per respondent" to the Managing Director of the Federal Communications Commission. 5 CFR 1320, Appendix A(2)(a). (For underlying rulemaking, see 59 Fed. Reg. 29738 (June 9, 1994); 59 Fed. Reg. 50813 (October 6, 1994).)

agency head. Some CIOs or agency heads (such as the Department of Energy) are statutorily prohibited from reviewing information collection activities conducted by a segment of the agency.[436] In such cases, OMB may delegate authority for activities within the CIO's or agency head's authority while retaining review and approval authority for the rest of the agency.

C. WHAT FACTORS NEED TO BE DESIGNED INTO THE PAPERWORK REVIEW PROCESS FOR DELEGATION?

An important aspect of OMB's decision to delegate PRA review authority lies in the design of the agency paperwork review process. The agency needs to demonstrate that its review process mirrors the information clearance process described in this Implementing Guidance, and be carried out in conformance with both the procedural and substantive standards of the PRA.

Conformance with the PRA begins with the agency's program office with responsibility for collecting information. That office prepares the proposal and reviews its consistency with the standards of the PRA. This proposal is then submitted to an agency paperwork review office. That office is to be staffed adequately with qualified personnel, who report directly to the CIO to whom the delegation is made and are outside the program office(s) that originate paperwork collections.

In order to justify a delegation, this paperwork review office is to have an established record of analyzing collection of information proposals, including the individual report items, the reporting frequency, and the intended respondents. If the agency carries out statistical surveys or other data collections that rely on statistical methods, the review office is to have on its staff or have access to one or more qualified agency statisticians who are independent of the program office sponsoring the data collection.

The review process is to cover the agency need for the information, the costs and burdens on respondents, relative burden of alternative approaches, the statutory or regulatory authority justifying the collection, the practical utility of the information to be received (including the planned actual use and disposition of the data), statistical validity, issues of privacy and confidentiality, computer security, availability of related information, clarity of format and instructions, reporting deadlines, and other relevant items.[437] The final decision to approve an agency's collection of information needs to be made at the level of CIO or agency head.

In addition to demonstrating that the agency's internal review procedures are adequate, an agency also needs to demonstrate a past record of fairness and effectiveness in reviewing the agency's proposed information collections. For example, a potential delegate could show that it has (1)

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[436] [Cite to the DOE Act and the independence of FERC within DOE.]

[437] 5 CFR 1320.18(c): "Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by OMB under [the PRA]."

identified problems with individual collections of information or systematic problems in program areas and corrected them on its own; or (2) significantly reduced the agency's paperwork burden, as recorded through the Information Collection Budget process.[438]

[438] 5 CFR 1320.17.

CHAPTER IX. HOW DOES THE PUBLIC BECOME INVOLVED?

This chapter describes the ways in which the public may become involved in OMB's review of agency information clearance packages and otherwise comment on, or seek information concerning, an agency's collection of information.

Any person may participate in an OMB review of a collection of information by providing comments to OMB. An agency is to provide copies of the information clearance package submitted to OMB for review "promptly upon request by any person."[439]

In addition, any person may provide information about a collection of information being conducted by an agency that does not display a currently valid OMB control number. Upon receipt of such information, OMB will seek to determine whether the collection is covered by the PRA or has been exempted from OMB review, and whether the agency should submit the collection for review.

Finally, any person may comment on a currently approved information collection--with respect either to content or burden--at any time.

A. WAYS IN WHICH THE PUBLIC CAN COMMENT ON INFORMATION COLLECTIONS

The public may comment on a collection of information at any time and through a variety of means. Comments that OMB receives about agency collections of information that have currently valid control numbers are placed in OMB's docket file for that collection and are considered in connection with any subsequent agency request for continued use of the collection.

Common opportunities for the public to provide comment include:

- The 60-day period for sending comments to the agency that precedes OMB review, described in Chapter V.C.
- The 30-day period for sending comments to OMB that occurs during OMB review, described in Chapter VII.E.1., VII.F.1. & VII.G.1.
- Any time that a collection of information is under OMB review, during which comments may be sent to the agency as indicated in the burden disclosure paragraph described in Chapter V.D.3.

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[439] 5 CFR 1320.14(b).

- As part of the agency's outreach to respondents that must be discussed in question 8 of the Supporting Statement (see Chapter V.C. and Appendix E).

In addition, two less common but critical avenues for public comment exist as outlined below.

1. Inquiry Regarding OMB Approval. At any time, the public may initiate an OMB review into an agency's collection of information by inquiring whether a specific collection of information has or needs OMB approval.[440] Unless the inquiry is frivolous, OMB must, in coordination with the agency responsible for the collection of information, to respond to the inquiry within 60 days of receipt and to take appropriate remedial action, if necessary. OMB may extend the 60-day response period to a specified date if OMB gives the person making the inquiry a notice of such extension.[441]

If the collection of information has OMB approval, OMB will so respond. If the collection of information does not appear to have OMB approval or may be exempt from review by OMB under the PRA, it is, as a general matter, OMB practice to forward a copy of such inquiries to the appropriate agency for further discussion.

Once the agency receives the inquiry, the agency needs itself to determine whether the collection of information is subject to the PRA and/or should have been submitted to OMB for review and approval. Depending on the situation, the agency may then need to suspend the collection of information until it receives OMB approval, and displays a currently valid OMB control number. The agency wold still be required to meet all the requirements of the PRA. The Public Protection provisions of the PRA and OMB regulations apply to all collections of information that should have, but do not display, a currently valid OMB control number.

Through public comment (or some other means), OMB may learn of an existing or new collection of information that is in use, yet unapproved, a so-called "bootleg." When this happens, it is general OMB practice to inform the agency that it needs to cease sponsoring or conducting the "bootleg" collection of information until it has submitted it for OMB review and obtained OMB approval.

If an agency does not cease collecting the information and request OMB review of a "bootleg," OMB may send the head of the agency a letter directing him or her to cease collecting the information. If the agency does not respond in a reasonable amount of time, OMB may also issue a notice in the Federal Register that the public is not required to comply with the agency collection of information.

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[440] 5 CFR 1320.14(c): Any person may request OMB to review any collection of information conducted by or for an agency to determine, if, under [the PRA and OMB's implementing regulation], a person shall maintain, provide, or disclose the information to or for the agency."

[441] 5 CFR 1320.14(c)(1) & (2).

2. Public Hearings. The public may request and/or an agency may deem it desirable to conduct one or more public hearings about a proposed collection of information or the continued use of an already approved collection of information. OMB supports such hearings as an excellent approach to gaining insight into public perceptions of burden and use and into issues of data availability and confidentiality. OMB may also hold a public hearing on an agency's proposed collection of information on its own initiative.

In addition, after consultation with the agency, OMB may initiate an informal rulemaking under the Administrative Procedure Act. The purpose of such a rulemaking would be to determine whether the agency's proposed collection of information merits approval under the PRA and OMB's implementing regulations.[442]

B. OMB'S DISCLOSURE TO PUBLIC

OMB actions on all collections of information are kept in paperwork docket files that are made available for public examination. Docket files are open to the public during normal business hours upon appointment.[443] The substantive content of a proposed collection of information may be withheld from the public if "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."[444]

Furthermore, the docket files need to include most public comments received on proposed collections of information.[445] Exempted from disclosure is information protected for national security reasons[446] or any communication relating to a "bootleg" which could hurt the "whistle blower."[447]

Any OMB decision to disapprove a collection of information or to instruct an agency to make substantive or material change to a collection of information is to be publicly available and include an explanation of the reasons for such a decision.[448] Such notice and explanation is to assure that OMB's reasons for disapprovals or instructions for change are clearly reflected in the public record.

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[442] 44 U.S.C. 3508; 5 CFR 1320.18(b).

[443] 5 CFR 1320.14(a).

[444] 5 CFR 1320.14(a).

[445] 44 U.S.C. 3507(e)(2): "Any written communication between the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs, and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public."

[446] 44 U.S.C. 3507(e)(3)(A).

[447] Protected from disclosure is "any communication relating to a [bootleg], the disclosure of which could lead to retaliation or discrimination against the communicator." 44 U.S.C. 3507(e)(3)(B).

[448] 44 U.S.C. 3507(e)(1); 5 CFR 1320.10(b); 5 CFR 1320.11(c); 5 CFR 1320.12(d).

Accordingly, OMB is to provide in reasonable detail the reasons for disapproving or instructing a substantive or material change to any information collection. Such an explanation is to be provided to the agency in the Notice of Action or in a separate letter that provides the applicable reasons for the OMB action.

APPENDIX A

EXAMPLES OF PRA NOTICES PUBLISHED IN THE FEDERAL REGISTER

A. NPRM -- PRA Language

[From Department of Education Proposed Rule][449]

Paperwork Reduction Act of 1995

Section 682.411 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Family Education Loan Program

These regulations strengthen the collectibility of delinquent FFEL loans by participating lenders. Monies collected under these regulations enable new and continuing students to borrow to help defray the cost of education.

The public reporting and recordkeeping burden for this collection of information is estimated to be 3,398.31 hours in order to make the necessary system changes to: (1) add additional warnings to the existing collection letters sent to delinquent borrowers and (2) increasing the period of time lenders will have to send the first written notice or collection letter to a delinquent borrower. This is a one-time activity.

The estimated burden for incorporating the additional warning paragraphs into the existing collection letters was calculated as follows:

Respondents.....	5,829
Responses.....	x 1
Hours per respondent.....	x 0.083 (5 minutes)
Annual reporting burden.....	483.81 hours

The estimated burden associated with expanding the window regarding when the first collection letter is sent to a delinquent borrower was calculated as follows:

Respondents.....	5,829
Responses.....	x 1
Hours per respondent.....	x 0.5 (30 Minutes)
Annual reporting burden.....	2,914.50 hours

[449] "Federal Family Education Loan Program, 61 Fed. Reg. 47398 (September 6, 1996).

Total annual burden hours = 3,398,31.....

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in--

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have a practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3053, Regional Office Building 3, 7th and D Streets, S.W., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except federal holidays.

B. Final Rule -- PRA Language

[From Department of Education Final Rule][451]

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Paperwork Reduction Act of 1995

Section 682.411 contains information collection requirements. As required by the Paperwork Reduction Act of 1995, the U.S. Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C 3504(h)). In response to the Secretary's invitation in the NPRM to comment on any potential paperwork burden associated with this regulation, the following comments were received.

Comment: Many commenters suggested that the Secretary amend Sec. 682.411(c) to expand the length of the current timeframe that lenders will have to send the first written collection notice or collection letter to a delinquent borrower from 1-10 days (1-15 in NPRM) to 1-20 days. The commenters stated that consumer loans often offer a 15-day grace period on payment due dates. They suggested that many borrowers believe that the student loan has a similar payment grace period and may delay mailing their payment. The commenters believe that many unnecessary collection letters will be eliminated by expanding the timeframe to 20 days.

Discussion: The Secretary declines to extend the timeframe specified in the NPRM (1-15 days) to 1-20 days. The Secretary believes that the expanded timeframe in the NPRM is sufficient to eliminate the majority of unnecessary collection notices that have been generated under the current 10-day period.

Change: None.

Comment: Many commenters stated that the Sec. 682.411 provision establishing a minimum of information to be included in the letters sent by lenders to delinquent borrowers during the 1-15 days of delinquency provides too much information and reduces the clarity of the letters making the letters less effective. The commenters expressed concern that requiring that additional information be added to the notice sent during this period could create a significant burden on lenders, since the first notice is generally a billing statement.

Discussion: The Secretary notes that it was not the Department's intent to require that the notice or collection letter sent during the 1-15 days of delinquency contain detailed information for the borrower regarding loan consolidation, forbearance and other available options to avoid default. This sentence was placed in paragraph (c) in error. This requirement should have been included in the collection timeframe for the 16-180 days of delinquency. However, the Secretary does intend that a statement in the collection letter relating to the day 1-15 delinquency indicate that other options are available if a borrower is having difficulty making payments. The name and telephone number of a contact person should also be included in this letter.

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[451] 61 Fed. Reg. 60477 (November 27, 1996)

Change: The regulations have been amended to remove the statement in the NPRM from paragraph (c) and insert it in paragraph (d). A modified statement has been inserted in paragraph (c).

C. 60 Day Notice -- Example 1

ENVIRONMENTAL PROTECTION AGENCY[452]

[FRL-5672-7]

Agency Information Collection Activities: Proposed Collection; Comment Request: Safe Drinking Water Act State Revolving Fund Program Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Safe Drinking Water Act State Revolving Fund Program Guidance, insert OMB Control Number. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects for the proposed information collection as described below.

DATES: Comments must be submitted on or before March 3, 1997.

ADDRESSES: Comments may be mailed to Clifford Yee, Office of Wastewater Management (4204), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. 20460.

FOR FURTHER INFORMATION CONTACT: Clifford Yee (202) 260-5822; FAX: (202) 260-0116; E-mail: yee.clifford@epamail.epa.gov.

SUPPLEMENTAL INFORMATION:

Affected Entities: Entities potentially affected by this action are the fifty states, Puerto Rico, and the recipients of assistance in each of these jurisdictions.

Title: Safe Drinking Water Act State Revolving Fund Program Guidance.

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[452] 61 Fed. Reg. 69089 (December 31, 1996)

Abstract: The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104-182) authorize the creation of Drinking Water State Revolving Fund (DWSRF) programs in each state and Puerto Rico to assist public water systems to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and to protect public health. Section 1452 authorizes the Administrator of the U. S. Environmental Protection Agency (EPA) to award capitalization grants to the states and Puerto Rico which, in turn, provide low-cost loans and other types of assistance to eligible drinking water systems.

The information collection activities will occur primarily at the program level through the: (1) Capitalization Grant Application and Agreement/State Intended Use Plan, (2) Biennial Report, (3) Annual Audit, and (4) Assistance Application Review.

(1) Capitalization Grant Application and Agreement/State Intended Use Plan: The State must prepare a capitalization grant application that includes an Intended Use Plan (IUP) outlining in detail how it will use all the funds covered by the capitalization grant. States may, as an alternative, develop the IUP in two parts. One part that identifies the distribution and uses of funds among the various set-asides and the DW-SRF. The second part addresses project funding to be provided by the DW-SRF itself.

(2) Biennial Report: The state must agree to complete and submit a biennial report on the uses of the capitalization grant. The scope of the report must cover the DW-SRF and all other non-SRF activities included under the capitalization grant agreement. States which jointly administer DW-SRF and CW-SRF programs, in accordance with Section 1452(g)(1), may submit reports (according to the schedule specified for each program) which cover both programs.

(3) Annual Audit: The state must agree to conduct or have conducted a separate audit of its capitalization grant. The scope of the audit will cover the DW-SRF and all other activities included in the capitalization grant agreement. States which jointly administer DW-SRF and CW-SRF programs, in accordance with Section 1452(g)(1), may submit audits which cover both programs but which report financial information for each program separately.

(4) Assistance Application Review: States assist local applicants seeking financial assistance in preparing DW-SRF loan applications. States then review completed loan applications and verify that proposed projects will comply with applicable federal and state requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Burden Statement:

(1) Capitalization Grant Application and Agreement/State Intended Use Plan.

1997: 51 States x 360 Hours = 18,360 Burden Hours
1998: 51 States x 300 Hours = 15,300 Burden Hours
1999: 51 States x 300 Hours = 15,300 Burden Hours

(2) Biennial Report.

1997: 51 States x 200 Hours = 10,200 Burden Hours
1999: 51 States x 250 Hours = 12,750 Burden Hours

(3) Annual Audit.

1997: 51 States x 80 Hours = 4,080 Burden Hours
1998: 51 States x 80 Hours = 4,080 Burden Hours
1999: 51 States x 80 Hours = 4,080 Burden Hours

(4) Loan Application Review.

1997: 51 States x 60 Applications x 40 Hours = 122,400 Burden Hours
1998: 51 States x 75 Applications x 40 Hours = 153,000 Burden Hours
1999: 51 States x 90 Applications x 40 Hours = 183,600 Burden Hours

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Dated: December 20, 1996.
Alfred W. Lindsey,
Acting Director, Office of Wastewater Management.
[FR Doc. 96-33261 Filed 12-30-96; 8:45 am]
BILLING CODE 6560-50-P

D. 60 Day Notice -- Example 2

DEPARTMENT OF HEALTH AND HUMAN SERVICES[453]

Food and Drug Administration
[Docket No. 96N-0458]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the affirmation of generally recognized as safe (GRAS) substances.

DATES: Submit written comments on the collection of information by February 24, 1997.
ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B-19, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ``Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal

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[453] 61 Fed. Reg. 67835 (December 24, 1996).

agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Affirmation of Generally Recognized As Safe (GRAS) Status (21 CFR 170.35(c)(1))--(OMB Control Number 0910-0132)--Extension

Under authority of sections 201, 402, 409, and 701 of the act (21 U.S.C. 321, 342, 348, and 371), FDA reviews petitions for affirmation as GRAS which are submitted on a voluntary basis by the food industry and other interested parties. Under section 409 of the act (21 U.S.C. 348), the agency has the authority to regulate food additives. Section 201(s) of the act (21 U.S.C. 321(s)), defines ``food additive'' and expressly excludes from the definition substances generally recognized as safe for use in food.

Specifically under section 201(s) of the act, a substance is GRAS if it is generally recognized among experts qualified by scientific training and experience to evaluate its safety, to be safe through either scientific procedures or common use in food. The act has historically been interpreted to permit food manufacturers to make their own determination that use of a substance in food is GRAS. To implement the GRAS provisions of the act, FDA has issued procedural regulations under Sec. 170.35(c)(1). These regulations establish a process by which a person may obtain FDA concurrence with a GRAS determination; this concurrence is referred to as ``GRAS affirmation.'' These regulations set forth the information to be submitted to FDA to obtain agency concurrence that a substance is GRAS (Sec. 170.35(c)(1)).

GRAS petitions are reviewed by FDA to ascertain whether the available data establish that the intended use of the substance is GRAS based upon either a history of the safe use of the substance, or upon widely available safety data (scientific procedures). The GRAS affirmation process is a voluntary one, and there is some risk that FDA may not agree with the petitioner's GRAS determination. The GRAS petition process does provide a public procedure for coordinating GRAS determinations. The process reduces the potential for public health problems when substances are marketed based upon unwarranted safety determinations and allows a food manufacturer to rely on the lawful status of a substance that has been affirmed by FDA as GRAS.

FDA estimates the burden of this collection of information as follows:

Estimated Annual Reporting Burden					
21 CFR Section	Annual No. of Respondents	Frequency Per Response	Total Annual Responses	Hours Per Response	Total Hours
170.35(c)(1)	5	1	5	2614(avg.)	13,070

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of GRAS affirmation petitions received in 1995. Although the burden varies with the type, size, and complexity of the petition submitted, GRAS petitions may involve analytical work and analysis of appropriate toxicological studies, as well as the work of drafting the petition itself.

Since 1980, FDA has not received any petitions for affirmation of GRAS status under 21 CFR part 186--Indirect Food Substances Affirmed As Generally Recognized As Safe. Section 184.1(a) (21 CFR 184.1(a)) affirms the use of those substances affirmed as GRAS in 21 CFR part 184--Direct Food Substances Affirmed As Generally Recognized As Safe, for use as indirect food ingredients.

E. <u>30 Day Notice -- Example 1</u>

ENVIRONMENTAL PROTECTION AGENCY[454][455]
[FRL-5304-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instruments.

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[454] Note that agencies are not required to have comments returned to them in the 30 Day Federal Register Notice but may do so if they choose. However, comments must, at a minimum, be directed to OMB.

[455] 60 Fed. Reg. 50570 (September 29, 1995).

DATES: Comments must be submitted on or before October 30, 1995.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1698.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements Under EPA's WasteWi$e Program (OMB Control No. 2050-0139; EPA ICR No. 1698). This is a request for extension of a currently approved information collection.

Abstract: EPA's voluntary WasteWi$e program encourages businesses and other organizations to reduce waste. WasteWi$e members are composed of Partners, which commit to engage in waste reduction activities of their own choice, and Endorsers, which promote WasteWi$e and waste reduction to their members. Endorsers, which are trade associations and other membership-based associations, submit only one form, the Endorser Registration Form, which identifies the organization and principal contact, and activities which the organization commits to conduct. Partners fill out three forms as follows:

The Partner Registration Form provides EPA with general company information and identifies the facilities committed to the WasteWi$e program: it is signed by a senior official who has authority to commit the company to the program. Each partner develops its own waste reduction goals and completes and submits an annual Goals Identification Form to EPA; partners also report annually on the progress made toward achieving those goals in the Annual Reporting Form.

The information collected will be used by EPA to develop and provide targeted technical information to assist organizations' voluntary waste reduction programs, identify and promote successful waste reduction strategies, and gauge the program's progress.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB Control numbers for EPA's regulations are listed in 40 CFR Part 9. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on July 31, 1995 (60 FR 38997).

Burden statement: The respondent burden for this collection is estimated to average 24 hours per response for the Endorser Registration Form; 10 hours per response for the Partner Registration Form; 40 hours per response for the first year's Goals Identification Form; 20 hours per response for each subsequent year's Goals Identification Form; and 55.5 hours per response for the Annual Reporting Form; for an estimated one-time respondent burden of 24 hours for Endorsers and an annual respondent burden of 105.5 hours in the first year and 75.5 hours each subsequent year for Partners. These estimates include the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected entities: Businesses and non-governmental organizations that voluntarily join the WasteWi$e program.

Estimated number of respondents: 515 in year 1 (115 new members); 615 in year 2; and 715 in year 3.

Estimated Total Annual Burden on Respondents: 41,110 hours in Year 1; 48,660 in Year 2; and 56,210 in Year 3.

Frequency of Collection: One-time and annual.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 1698 and OMB Control No. 2050-0139 in any correspondence.
Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW. Washington, DC 26460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

F. Emergency Federal Register Notice

DEPARTMENT OF LABOR [456]

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

January 22, 1996.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35). OMB approval has been requested by January 26, 1996. A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202) 219-5095). Comments and questions about the ICR listed below should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10325, Washington, DC 20503.

Individuals who use a telecommunications device for the deaf (TTY/TDD) man call 202 219-4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Agency: Employment and Training Administration.

Title: Reporting of Claims Activities for Unemployment Compensation for Federal Employees-Excepted (UCFE).

OMB Number: 1205-new.

[456] 61 Fed. Reg. 2267 (January 25, 1996).

Frequency: Weekly.
Affected Public: State, Local or Tribal Government.
Number of Respondents: 53.
Estimated Time Per Respondent: 1 hour.
Total Burden Hours: 265.
Description: H.R. 1643 was signed by President Clinton on January 6, 1996. H.R. 1643, Section 312 states that ``. . . any Federal employee who is excepted from furlough and is not being paid due to a lapse in appropriations shall be deemed to be totally separated from Federal service and eligible for unemployment compensation benefits . . . with no waiting period for such eligibility to accrue."

Therefore, Department of Labor is seeking emergency clearance to obtain data to determine the extent to which this new legislative provisions is used and what impact it may have on the Unemployment Compensation for Federal Employees (UCFE) program.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.
[FR Doc. 96-1248 Filed 1-24-95; 8:45 am]
BILLING CODE 4510-30-M

G. Burden Statement[457]

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is xxxx-xxxx. The time required to complete this information collection is estimated to average ___ hours (or minutes) per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

[Note: Agencies are no longer required to solicit comments through the burden statement, but they may do so at their own discretion.]

[457] Department of Education burden statement.

APPENDIX B

PROCEDURES FOR ESTIMATING BURDEN USING RECOMMENDED WORKSHEETS

1. General Information About Estimating Burden

Depending on the nature of the information collection, respondents may fulfill an information collection directly or delegate the task in full or in part to subordinates, partners, agents or contractors. Surveys of individuals, for example, rarely require respondents to consult or reconstruct historical records or obtain assistance from others. Other surveys and reporting requirements, however, cannot be fulfilled without extensive records searches, data collection, and outside advice and support. All paperwork burden needs to be accounted for, whether it is borne directly by respondents or indirectly by respondents' subordinates, partners, agents or contractors. Burden that is borne indirectly needs to be converted into burden-hours as if it had been borne directly.

The following worksheets provide a simplified, structured approach for estimating burden. While you are not obligated to use these worksheets in developing burden estimates, their use will simplify the process of developing and justifying estimates. On request, a copy of the Excel© 5.0 Workbook will be made available to substantially lessen agencies' own burdens in estimating paperwork burden.

Financial and other costs are estimated separately from burden-hours. Agencies needs to estimate the *actual cost,* in current dollars, for capital investments, operation and maintenance expenditures, information technology, and other non-labor expenditures that would not have been made but for the information collection requirement. *Actual cost* is defined as what the respondent must pay in the marketplace to obtain these goods and services, even if they may be in fact provided by the respondent. Thus, if an information collection requires the acquisition of a new computer system to collect, store and manage the relevant data and the respondent happens to be a computer manufacturer, the actual cost of that computer system is the market price of the system rather than the manufacturer's marginal cost of producing it. Market price is the correct measure because the opportunity cost to the respondent is the foregone sale of the computer system.

2. How to Use the Recommended Worksheets to Collect and Organize Burden Estimates

We have developed a set of four worksheets to provide a convenient framework for identifying and collating burden estimates. These four worksheets address the following items:

a. Estimating burden-hours per respondent;
b. Estimating aggregate burden-hours;

c. Estimating capital and other non-labor costs per respondent; and
d. Estimating aggregate capital and other non-labor costs.

OMB's regulation and this Implementing Guidance identify nine categories of paperwork-related activities. Thus, each Worksheet allows for nine separable estimates of paperwork burden. We have identified these categories separately to make it easier to develop and structure comprehensive burden estimates. The only calculations required involve summing rows or columns on a single Worksheet, or multiplying values from matching cells across Worksheets. In the computerized version of these worksheets, all calculations have been pre-programmed to eliminate the need to manually perform any of these calculations.

a. Estimating Burden-Hours per Respondent

The first building block of a burden estimate involves estimating the number of burden-hours required for each respondent to fulfill the information collection. Because different tasks entail different kinds of labor, we have provided four generic labor classes to choose from in assigning burden-hours:

i. Clerical, unskilled, service and production labor;
ii. Skilled, craft and technical labor;
iii. Managerial and professional labor; and
iv. Executive labor.

To complete this worksheet, you need to identify the most appropriate labor class for the task and then estimate the number of hours required to complete it. For example, only clerical or unskilled labor may be needed to review simple, straightforward instructions (line 1). However, information collections involving complex concepts or legal definitions probably require highly skilled managers or professionals, such as engineers or legal counsel. Similarly, the task of searching data sources (line 7) could be performed by relatively unskilled personnel if it involves little technical skill or judgment. However, some data search tasks require highly specialized computer skills or substantive knowledge, in which case the burden will be borne by personnel from a another labor class.

You also need to estimate an appropriate wage rate for each generic labor class, taking into account the specific features of the information collection. Wage rates must be fully-loaded -- that is, they need to include pre-tax cash wages, the implicit hourly value of fringe benefits, and the cost of overhead support. Staff can help you identify appropriate wage rates if you are unsure what to use.

b. Estimating Aggregate Burden-hours

The second task in developing comprehensive burden estimates involves estimating the number of respondents expected to fulfill the information collection. Often, the number of

respondents is identical to the number of entities to whom the agency intends to distribute the information collection. In these cases, the number of respondents will be identical for each of the nine types of paperwork activity listed in the worksheet.

Situations may arise, however, in which the number of respondents varies across paperwork activities. For example, if an renewal of an existing information collection expands the number of respondents but makes no changes in the underlying data that must be reported, then the number of respondents who must familiarize themselves with the instructions (and any applicable regulations) may be limited to just the additional respondents. On the other hand, even those respondents who are broadly familiar with such an information collection may still need to review instructions as if they were new respondents, particularly if staff turnover has resulted in new personnel being assigned the responsibility for fulfilling the information collection. Each information collection will be different, so you should carefully examine whether it is appropriate to draw distinctions across respondents.

You can use Worksheet B to collect estimates of the number of respondents expected to engage in each of the nine paperwork activity tasks. By multiplying these estimates by the total number of burden-hours per respondent -- the right-most column on Worksheet A -- you will obtain the aggregate burden for each activity. Summing these aggregate values yields the total burden-hour estimate, which is then placed in Box 13 on the OMB Form 83-I.

Our Excel© 5.0 Workbook performs these calculations for you.

c. Estimating Capital and Other Non-labor Costs per Respondent

The definition of "burden" includes more than just time, because fulfilling an information collection often requires other resources, such as investments in technology. Carefully examine each of the paperwork activity types and consider whether respondents typically need to devote other resources besides time to fulfill the information collection.

Worksheet C provides a convenient place to collate these estimates. We have provided separate columns for capital (such as investments in long-lived facilities or equipment and other one-time expenditures), operation and maintenance (such as expenditures on the care and feeding of capital investments), and other non-labor expenditures (such as expenditures on training classes, books and other resources). Because you included general overhead costs with the cost of labor in Worksheet A, you should not include it again here.

The sum of capital and annual non-labor expenditures per respondent belongs in the right-most column of Worksheet C. As before, our Excel© 5.0 Workbook performs these calculations for you.

d. Estimating Aggregate Capital and Other Non-labor Costs

The final task involves aggregating capital and other non-labor costs across respondents. You can perform this multiplication on Worksheet D using information on the number of respondents, which you already recorded on Worksheet B. Alternatively, our Excel© 5.0 Workbook will perform this task automatically.

3. Completing the OMB Form 83-I

To complete the OMB Form 83-I you need to transfer the results of your calculations from Worksheets B and D into the appropriate boxes. Copy your estimate of total estimated burden-hours from the lower-right corner of Worksheet B into Box 13. Copy your estimate of total capital and other non-labor costs from the lower-right corner of Worksheet D into Box 14.

Alternatively, our Excel© 5.0 Workbook will do this for you. The Workbook places all the summary values you need for the SF-83-I on the final page.

Worksheet A:

Estimated Burden-Hours per Respondent, by Labor Category and Activity

	Paperwork Activity	Clerical, Unskilled, Service and Prod'n Labor	Skilled Labor, Craft Labor, and Technical Labor	Managerial and Professional Labor	Executive Labor	Total Burden Hours by Paperwork Activity	Total Cost of Burden Hours by Paperwork Activity, per Respondent
	Fully-Loaded Wage Rate, $/hr						
Line 1	Reviewing instructions					0.00	$0.00
Line 2	Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information					0.00	$0.00
Line 3	Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information					0.00	$0.00
Line 4	Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information					0.00	$0.00
Line 5	Adjusting the existing ways to comply with any previously applicable instructions or requirements					0.00	$0.00
Line 6	Training personnel to be able to respond to a collection of information					0.00	$0.00
Line 7	Searching data sources					0.00	$0.00
Line 8	Completing and reviewing the collection of information					0.00	$0.00
Line 9	Transmitting, or otherwise disclosing of information					0.00	$0.00
Line 10	**Total**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**$0.00**

Worksheet B: Estimated Aggregate Burden-Hours, by Activity				
Paperwork Activity		Number of Respondents	Total Burden Hours by Paperwork Activity	Total Cost of Burden Hours by Paperwork Activity, All Respondents
Line 1	Reviewing instructions		0.00	$0.00
Line 2	Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information		0.00	$0.00
Line 3	Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information		0.00	$0.00
Line 4	Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information		0.00	$0.00
Line 5	Adjusting the existing ways to comply with any previously applicable instructions or requirements		0.00	$0.00
Line 6	Training personnel to be able to respond to a collection of information		0.00	$0.00
Line 7	Searching data sources		0.00	$0.00
Line 8	Completing and reviewing the collection of information		0.00	$0.00
Line 9	Transmitting, or otherwise disclosing of information		0.00	$0.00
Line 10	**Total**	**0**	**0.00**	**$0.00**

Worksheet C:

Estimated Cost of Capital and Other Non-Labor Costs per Respondent, by Activity

Paperwork Activity		Capital Costs	Annual O&M Costs	Annual Other Non-Labor Costs	Number of Years for Annual Costs	Total Non-Labor Costs by Activity, per Respondent
Line 1	Reviewing instructions					$0.00
Line 2	Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information					$0.00
Line 3	Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information					$0.00
Line 4	Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information					$0.00
Line 5	Adjusting the existing ways to comply with any previously applicable instructions or requirements					$0.00
Line 6	Training personnel to be able to respond to a collection of information					$0.00
Line 7	Searching data sources					$0.00
Line 8	Completing and reviewing the collection of information					$0.00
Line 9	Transmitting, or otherwise disclosing of information					$0.00
Line 10	**Total**	**$0.00**	**$0.00**	**$0.00**	**0**	**$0.00**

Worksheet D:

Estimated Aggregate Non-Labor Costs, by Activity

	Paperwork Activity	Number of Respondents	Total Non-Labor Costs by Activity, per Respondent	Total Non-Labor Costs by Activity, All Respondents
Line 1	Reviewing instructions	0	0.00	$0.00
Line 2	Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information	0	0.00	$0.00
Line 3	Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information	0	0.00	$0.00
Line 4	Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information	0	0.00	$0.00
Line 5	Adjusting the existing ways to comply with any previously applicable instructions or requirements	0	0.00	$0.00
Line 6	Training personnel to be able to respond to a collection of information	0	0.00	$0.00
Line 7	Searching data sources	0	0.00	$0.00
Line 8	Completing and reviewing the collection of information	0	0.00	$0.00
Line 9	Transmitting, or otherwise disclosing of information	0	0.00	$0.00
Line 10	**Total**	**0**	**0.00**	**$0.00**

APPENDIX C

FREQUENTLY ASKED STATISTICAL QUESTIONS

Topics covered in this appendix

1. **Estimating response rates**
2. **Consequences of low response**
3. **Modes of collection (mail, telephone, interview)**
4. **Incentives**
5. **Statistical classifications**
6. **Methodological research; pilot surveys**
7. **Generic clearances**
8. **[reserved]**
9. **Issues in Opinion or Attitudinal Surveys**
10. **Statistical issues in Customer Surveys**

FASQ* #1 -- Estimating Response Rates

Recently many Federal agencies have been exposed to something akin to "culture shock" with respect to statistical performance. The National Performance Review urged agencies to match "the best in business", and then these same agencies hear about corporate surveys with 20% response or market research studies with 40% response. In this situation, agencies without solid experience don't know what response to expect in their surveys.

In 1978, Heberlein and Baumgartner (H-B) examined several hundred mail surveys reported in the literature over many years and developed a regression model that used a number of factors to predict response rates. Two of these factors were sponsorship by a government organization and sponsorship by a market research organization. Government sponsorship produced a 10 point response advantage while market research sponsorship produced a 10 point loss (for a 20 point net difference). Subsequent work by Goyder [1985][1] used a transformation to reflect the diminishing returns phenomenon (the fact that the incremental effect of each additional action to improve response gets smaller as the response rate rises), and included personal interview surveys as well as mail surveys. The Goyder model was more realistic at high response rates, but generally confirmed the H-B results in the range of response rates of concern to OMB.

Since the 1970's the performance of Federal statistical agencies has improved while, according to the Council of American Survey Research Organizations (CASRO), response to market research has declined further and other non-governmental survey research is struggling. In 1985, OMB's Statistical Policy Office looked at about 600 surveys addressed to businesses (predominantly mail surveys) and found the median response rate for probability sample surveys was about 90% and the average response rate overall was in the 80-85% range[2].

There has been further research on models of this kind, but the original H-B model tracks reasonably well with some of the older designs in the OMB study. Thus this simple model provides a useful rule of thumb for the moderate performance designs that often appear in clearance requests and H-B predictions might be considered a lower bound for higher performance designs. (The major difference in high performance designs is the amount of effort and money spent on methodological testing and fine-tuning.) Using the factors that generally apply to government surveys, the H-B model can be written as shown in figure 1.

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[1] Goyder, John, "Face-to-Face Interviews and Mailed Questionnaires: The Net Difference in Response Rate", Public Opinion Quarterly Vol. 49: 234-252 (1985).

[2] This study included surveys where response was voluntary as well as those where response was required by law. About 80% of the voluntary probability surveys and 55% of the mandatory probability surveys reported response rates above 85%. Very few surveys of any type showed response rates below 70%.

figure 1

EXPECTED RESPONSE RATE =

46.5	(constant term for a government survey of targeted population)
-7.5	(if general population rather than targeted population)
+7.3	(if topic is probably "salient" to the intended respondents, 2X if highly salient)
-0.44xN	(where N is the length in pages)
+7.4 xC	(where C is the total number of contacts, see notes)
+8.6	(if there are special follow-up procedures, e.g., certified mail, phone call)

Notes:

An advance letter, the mailing of the questionnaire, a reminder card or phone call or another copy of the questionnaire used as follow-up each counts as one "contact".

"Salience" reflects the respondent's interest in the topic or its perceived importance. This is often affected by the way the subject matter is presented. This measured on a 0,1,2 scale, where "1" means probably salient.

The burden effect (number of pages) is small, but this relates only to the gross response rate. The model does not consider incompleteness or errors due to fatigue that may result from excessive length.

The model should only be applied to well designed questionnaires that are clear and relatively easy to answer.

Examples:

1) For a 9-page survey of a well-defined group on a topic of some interest to them, using an advance letter and two routine follow-ups, one would expect a response rate of:

$46.5 + 7.3 - 9(0.44) + 4(7.4) = 79.4\%$ or about 80%

2) For a case-control survey, expect a lower response in the (general population) control group -- add one extra follow-up to offset the loss. Test the presentation of the survey to improve salience for the control group, and add another follow-up if there is still a salience loss.

The model indicates that the single most effective factor in improving response is multiple contacts. The market research community often tries to portray follow-up as ineffective and burdensome in order to justify low quality designs (e.g., "grab samples" and "mall intercepts") where follow-up is impossible, but the H-B analysis shows that multiple contact designs

substantially increase respondent participation and thus the completeness and "representativeness" of the achieved sample.

Subsequent research (Baumgartner & Heberlein, 1986[3]) indicates that the 1978 "saliency" coefficient may be underestimated. The full 1978 model included a factor for small (dissonance/compensation) cash incentives to explain some of the variation in market research studies that used these incentives. The experiment reported in 1986 found a larger saliency effect and virtually no gain due to incentives among respondents for whom the topic was highly salient. This suggests that some of the weight assigned to the incentive coefficient (assumed to be independent in the 1978 analysis) should have increased the saliency coefficient given the negative correlation discovered in the 1985 experiment.

Comparison of BLS experience using minimum follow-up efforts

	BLS range	H-B predicted
Combined survey & cover letter --	*40-60%*	*54%*
plus a reminder card ——————	*47-71%*	*61%*
plus second copy of questionnaire	*57-86%*	*69%*

High performance designs using methods that have become common since the original H-B paper (e.g., the Dillman Total Design Method, cognitive testing, sophisticated contact or recruitment strategies, etc.) may do 10-15 points better than the H-B prediction, and this often shows up as an increase in the response achieved prior to follow-up. Some of the high performance designs in the 1985 OMB study produced response 20-30 points higher than the H-B estimate.

THE BOTTOM LINE:

Use the H-B calculation to get a rough estimate of response to mail surveys. You can probably add a fudge factor when high performance methods are used or when the topic is highly salient to respondents. If the result is below 80%, focus on contacts -- adding an effective advance letter or improving follow-up (even a well-written reminder postcard has a positive effect on response). But remember that none of this will offset unclear or loaded questions or questions that are difficult or impossible to answer. (For interview methods, see the comparisons made by Goyder cited in FASQ #3.)

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[3] Baumgartner, Robert M. and Heberlein, Thomas A., "Mailed Questionnaire Response Rates: The Effect of Monetary Incentives and Salience of the Topic" [the salience effect was originally reported in this paper prepared for the May 1986 AAPOR Conference (provided in draft form in personal correspondence) -- it was subsequently reported in an expanded paper ("Prepaid Monetary Incentives and Mail Survey Response Rates", Baumgartner, Robert M. and Rathbun Pamela R.) presented at the August 1996 Joint Statistical Meetings]

FASQ #2 -- Consequences of Low Response Rates

Measuring the effects of low response is very difficult since it requires some way of estimating what was not observed. Surveys that use quotas at some stage have provided indications of the large distributional distortions that may occur. In these cases, the quota scheme encourages a degree of the self-selection, a characteristic similar to low response surveys, but it is nearly impossible to estimate the equivalent level of non-response.
The 1995 experience of BLS with their Current Employment Statistics (CES) program indicates the errors that occur with self-selection (in this case quota samples of businesses[4].)

> "The CES is a quota sample whose inception over 50 years ago predates the introduction of probability sampling as the internationally recognized standard for sample surveys. Quota samples are known to be at risk for potentially significant biases, and recently completed BLS research suggests that, despite the large CES sample size, employment estimates based upon that sample at times diverge substantially from those that a more representative sample would have been expected to produce."[5]

While standard measures of variance and bias are not valid for quota samples, BLS had used a sophisticated bias adjustment for the CES and regularly tracked the small amount of error identified by the periodic benchmark process. The small size of these typical adjustments created a false sense of security and failed to prepare users for the size of the error when the system inevitably blew up. Such behavior is common when the distribution observed in the sample is distorted due to inappropriate selection processes or low response rates.

There are several types of problems that compromise the utility of low-response data collections -- response bias is one most likely to be recognized, but understated variance estimates and other inaccurate representations of the underlying distribution may cause substantial problems even when bias is small. One realization of the variance problem has puzzled some analysts: a relationship is not significant at very low response (sample too small); then appears significant at higher, but still inadequate, response (sample larger and variance understated); and is finally found to be insignificant at high response (sample large and variance accurate). This can easily occur when an incomplete sample fails to capture the full variability that would be observed in a complete sample.

Some experiments conducted in household surveys compare incomplete samples at different stages of follow-up. This approach has been used to show that errors in statistics that are sensitive to the distribution (e.g., those such as significance tests that rely on measures of variance) are large at low response rates, but generally are not significant at 75% or above.

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[4] This is one of the rare exceptions to OMB's general policy of requiring probability samples for quantitative surveys, which policy has been pursued for over two decades -- see Statistical Policy Directive # 1.

[5] June 2, 1995 press release from BLS announcing plans to convert to a probability sample.

While such analyses have the advantage of holding the underlying population and other factors fixed, they tend to produce a very course scale since each stage of follow-up may add 10-15 points to the response rate.

Experiments conducted under favorable conditions (e.g., surveying homogenmeous populations that tend to be robust with respect to deficiencies in the sampling process), have demonstrated that errors that produce incorrect inferences begin to show up when response drops into the range from 50-75%, with the likelihood of such errors rising rapidly at response rates lower than 50% (several references). One of the most extensive analyses under such favorable conditions was reported by Goudy [1978], who observed that "inappropriate substantive conclusions may be drawn even when statistical return bias is absent," finding that the problems did not disappear until response reached about 70%. Goudy also observed that there is "an even greater liklihood of drawing inappropriate substantive conclusions when more heterogenous samples are examined."[6] Goudy's conclusions were echoed by Dolsen and Machlis [1991] who found that "The results from mail-back surveys of relatively homogeneous ... populations may yield useful data when at least 65% response is secured, substantive response bias can be ruled out, and sampling error is assumed to be random."[7] These cautions were amplified by Choi, Ditton, and Matlock [1992][8] who compared three replications of a large survey (of a homogeneous group) at response levels below 70% and found significant differences in 26 of 33 tests. These authors also found that assuming that sample losses were random would lead to rejecting the hypothesis of homogeneity!

In most cases, researchers are more interested in getting the most complete response possible, rather than exploring the effects of poor response. However, there is a program at the Census Bureau that provides a natural experiment in the behavior of low response surveys. The Bureau conducts a number of low-cost surveys with limited follow-up in their Current Industrial Reports (CIR) program. This is one of the rare instances where comparable data from annual surveys, the quinquennial Census of Manufactures, and tax returns permits information not reported by respondents to be estimated with reasonable accuracy[9]. Since response rates in these surveys are below normal OMB standards, the Census Bureau routinely reports both response rates and "coverage" rates in its submissions to OMB. Coverage is

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[6] Goudy, Willis J., 1978, "Interim Response to a Mail Questionnaire: Impacts on Variable Relationships", The Sociological Quarterly, Vol. 19, No. 2, p. 264

[7] Dolsen, Dana E. and Machlis, Gary [1991], "Response Rates and Mail Recreation Surveys Results: How Much is Enough?, Journal of Leisure Research, Vol. 23, No. 3, p. 276.

[8] Choi, Seungdam, Ditton, Robert B., and Matlock, Gary C., "Homogeneity across Mail Survey Waves: A Replicated Study" (1992) Journal of Leisure Research Vol. 24, No. 1, pp.79-85

[9] Note that BLS had similar views of its bias correction scheme for the CES. The risk involved in any of these correction schemes is the reason OMB questions low response surveys even when some plausible correction scheme may be available.

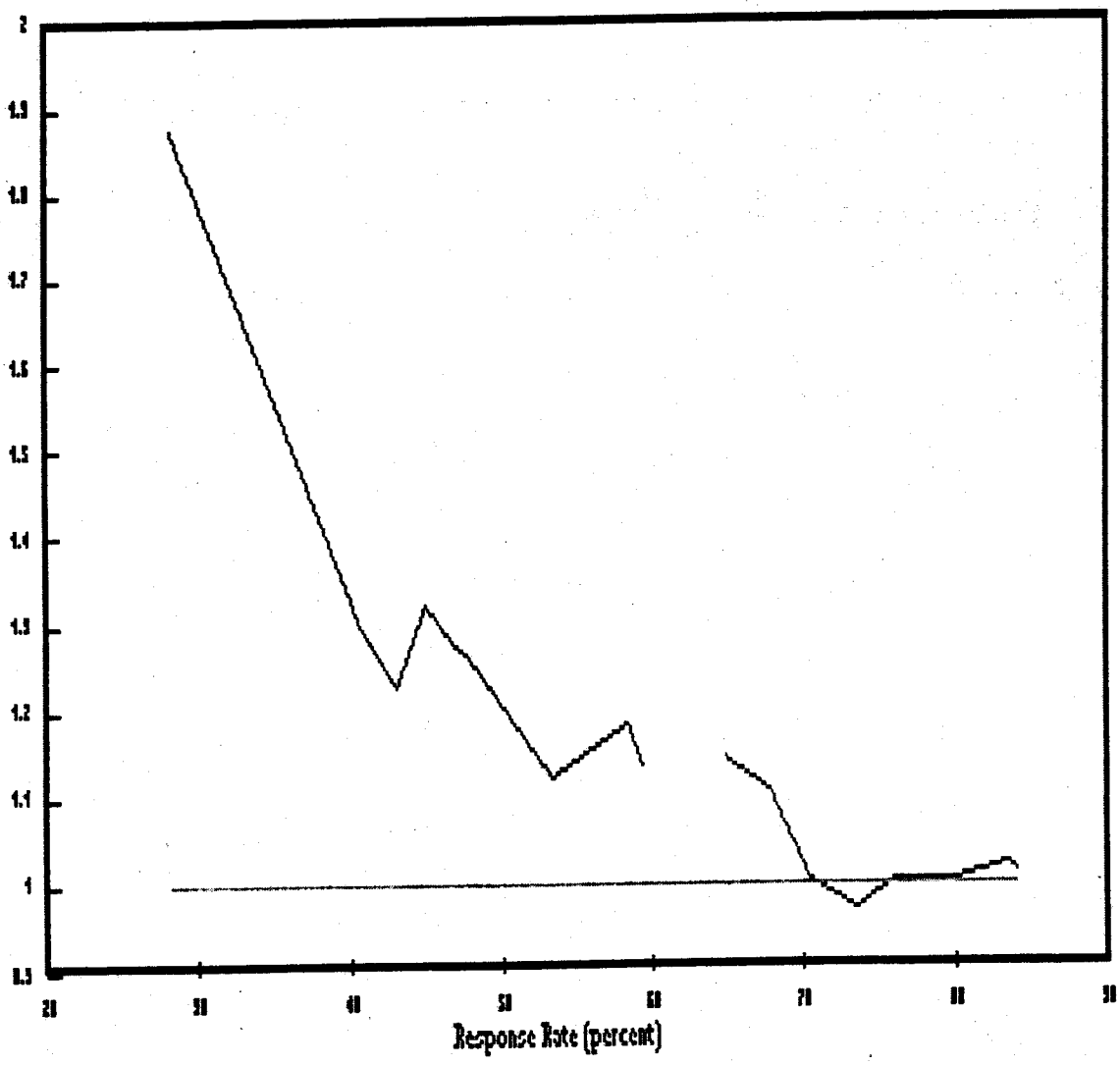
response weighted by a measure of output and the rate compares output "covered" by respondents in the sample relative to total output measured from all data sources.

If nonrespondents were scattered at random across the business size distribution, then the response and coverage rates would be nearly equal and their ratio would be approximately one. In a few cases this is true, but generally the coverage rate exceeds the response rate in surveys of manufacturers -- for several reasons. In practice the actual distribution sampled is often truncated at the low end by size thresholds and, in addition, the largest companies are followed up more aggressively. The nominal effect of these factors can be estimated from the mailed portion of the Census of Manufactures where the coverage rate exceeds the response rate by a factor of about 1.15. This provides a point of reference for examining any additional distortion that may be introduced by poor response.

The attached graph shows performance data from two CIR surveys that include some instances of low response rates. The "distortion ratio" on the vertical scale of the graph is the ratio of coverage to response that has been normalized by dividing it by the overall ratio for the full Census of Manufactures. The points on the graph come from two cases. In one case the response varies from quarter to quarter over a range from just over 60% to about 85%. The other case tracks a problem survey whose response varied from a low of 28% when it was collected monthly to just under 60% after it was changed to a quarterly survey. Since the response did not reach 60% in this case, we cannot verify that it tracks the reference data at 70% and above, but the scale values on either side of 60% appear to be comparable.

Figure 1: Distributional Distortion

when response drops below 70%



FASQ #3 -- Modes of Collection

The Conventional Wisdom (circa 1970)

The traditional modes of data collection (mail, telephone interview, and personal interview) were typically described as follows:

MAIL ----- ***low*** cost, ***small*** bias, ***low*** response rates
PHONE ---- ***moderate*** cost, ***moderate*** bias, ***moderate*** to ***high*** response
PERSONAL - ***high*** cost, ***large*** bias, ***high*** response

The range of costs was (and still is) quite large (a factor of 100 or more). Nonresponse in government surveys varied from 5-15% in personal interviews to 15-35% in mail surveys, with telephone interviews running somewhat lower than personal interviews. The excess bias in both interview methods is the bias that results from the interaction with the interviewer.

How Things have Changed

The thought provoking 1985 paper by Goyder referenced in FASQ #1 contains a comparison of early response experience (on which the conventional wisdom is based) against more current (post 1970) results. In each case regression analysis was used to isolate the effect of mode from other design features. The analysis of early results showed a narrower gap in response rates between mail and interview methods (i.e., the low performance of early mail surveys was not a function of mode, but rather reflected the fact that many mail surveys also failed to use techniques, such as multiple follow-up, that improve response). Even more interesting was the fact that a dummy variable for post-1970 work showed small but significant negative coefficients for both the main effect and interaction, producing a modest reversal of the earlier relationship between mail and personal interview surveys.

Goyder attributes some of the improvement in mail surveys to the influence of Dillman and other practitioners who have demonstrated how to get excellent performance from mail surveys ("[mail] questionnaire response into the 70 percent range [is] attainable, even with general populations, and without a highly salient research topic"). The personal interview method may have suffered somewhat from heightened public sensitivity to matters of privacy -- an interview is more intrusive than mail. For a nominal pre-1970 personal interview response rate of 85%, the model estimates a loss of 6-13 points between the 1950's and the 1980's.

Response rates for telephone interviews initially closed the gap with personal interviews, but later suffered resistance widely attributed to public saturation with telephone solicitations (some of which masquerade as "surveys"). Most recently, response to telephone interview methods has taken another hit with the rapidly expanding use of answering machines to screen

calls. But as Goyder pointed out -- "Despite concern about saturation surveying, [mail] questionnaire response has so far withstood the erosion, and even gained marginally in the U.S., net of enhanced follow-up practice". [Goyder, 1985, p. 247]

The ratio of costs has changed little. In both mail and personal interview surveys, the use of incentive payments to offset poor response in low performance designs eliminated the cost advantage of cheap surveys and also tended to truncate the low tail of the response distribution in each mode. This effect narrowed the variation in both costs and response within each mode, but did not change the ratio of average cost.

The excess bias in interview techniques (so-called "interviewer bias") still gives mail a relative advantage, all other things being equal.

Mixed Strategies

The "mode effect" is well-known in statistical literature -- the same question administered in a mail survey and an interview will often produce measurable differences in the answers. While part of this effect is sometimes attributed to interviewer bias, some of it is likely to be a consequence of mechanical differences between the modes. Every detail of a mail survey is available to a respondent from the outset -- the respondent can read through the entire survey instrument before any question is answered. An interview is more linear, that is, the respondent knows only what questions have already been asked (and may remember those imperfectly). This means that the respondent to a mail survey can, in theory, have a more complete perception or understanding of the purposes of a survey, and this may affect the answers provided.

Concern for the mode effect has sometimes inhibited the development of mixed mode strategies, but some of these strategies have proven themselves.

> The National Agricultural Statistics Service (NASS) has found that some respondents who receive a mail questionnaire prefer to submit their answers in a subsequent phone call -- this was an outgrowth of using telephone follow-up to a mail survey. In this approach the mail instrument gives each respondent full knowledge of the survey, and those who prefer response by telephone are accommodated.
>
> A special follow-up (certified mail or a phone call) often improves the overall response to a mail survey by increasing "salience" (in this case salience means the perceived importance of the survey).
>
> The 1990 Census used a mass mailing with follow-up by phone calls or personal visits to nonrespondents.

low salience is unavoidable. Note that part of the response advantage enjoyed by government surveys is due to the public presumption that such surveys are more likely to be important (a salience effect).

Cash Payments for Out-of-pocket Costs --

Payment of a reasonable cash allowance for out-of-pocket costs or inconvenience should be considered whenever such costs are a result of conditions imposed by the data collection protocol (e.g., travel to a central, specially-equipped site to participate in a focus group, or to a special facility for medical examination). Since the purpose of such payments is to neutralize the adverse effect of special requirements, it should generally be administered as a fixed payment with no paperwork (receipts. etc.).

Paid Laboratory Subjects --

A reasonable amount may be paid to persons solicited to participate as subjects in a laboratory experiment (e.g., cognitive laboratory testing) provided that the utility of such laboratory experiments can be demonstrated.

Cash Incentives for Special Requirements --

Cash incentives may be considered in any case where the survey protocol involves tasks or impositions that go beyond soliciting answers to questions and the incentive can be shown to reduce mean square error. However, to meet this test, such payments should be less than $20 unless the task or imposition is such that the respondent's reaction to the incentive will not affect results. An example of this exception is EPA's incentive package for soliciting vehicles for in-use laboratory testing. It includes a loaner vehicle, gasoline, a free tune-up, and a cash payment. The total value is set high enough to reduce volunteer bias and the actual results are completely determined by the characteristics and condition of the tested vehicle (cannot be biased by the respndent's attitude toward the incentive).

to produce any measurable bias. Reimbursement for out-of-pocket costs also appear safe. Payments associated with physical measurements do not change the measurements (except possibly due to self-selection bias). In these cases the expense of the "mean square error" test proposed by the 1993 Symposium represents is probably not justified by the insignificant levels of bias that might be measured.

On the other hand, for large cash payments ($20 or more), there is substantial evidence of altered responses, performance bias (in the case of objective testing protocols), and interviewer bias. These biases appear to be of the same order of magnitude as the gain ion response due to the incentive. Since the amount of response gained represents an upper bound on any reduction in the bias due to non-response, the net effect of large incentives on total bias is almost certain to increase the mean square error (if it could be accurately measured). Worse yet, the interviewer bias associated with large cash payments has confounded almost every incentive test analyzed by OMB to date[38].

Summary: Criteria for Reviewing Incentive Proposals

In General --

> Incentives should only be considered in the context of a rigorous design, professionally implemented. They may not be used to offset the effects of poor questionnaires, inadequate follow-up, imposition of inappropriate risks, or other deficiencies that unnecessarily compromise respondent cooperation.

Non-cash incentives --

> Carefully selected non-cash incentives that increase salience (i.e., focus attention on the purposes or importance of the data collection) generally improve cooperation with little risk of bias. They should be considered whenever the survey protocol involves tasks or impositions that go beyond soliciting answers to questions. In general, non-cash incentives are more cost-effective than comparable cash incentives.

Token Cash Incentives --

> This approach has been used to good effect in private sector mail surveys to offset low salience with minimal risk of bias. Since government surveys usually enjoy much higher response, its uses are substantially more limited but should be considered where

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[38] In the exceptional case, neither interviewer bias nor any incentive effect was measurable.

feel that this is the case in general, it could be the case for certain subpopulations (e.g., homeless, disenfranchised, prostitutes, drug dealers).

Additional Research Results

Much of the early research on incentives is irrelevant to potential use in government surveys. Most of it was based on survey designs that fail to meet the minimum methodological standards achieved in government surveys. For example, the much cited "improvement" in response due to incentives are referenced to the very low response rates achieved in market research (e.g., improvement from an average of 20-35% response to about 50% [Yu and Cooper] or from about 29% to about 48% [Church]). Observed increases have been much more modest in rigorous designs (with higher response achieved by effective follow-up procedures) and quite small indeed at the 85% median response rate achieved by Federal statistical agencies for rigorous probability sampling.

The rough equivalence between total response achieved with incentives and total response achieved with effective follow-up has now been observed in a number experiments[33]. This phenomenon strongly suggests that both techniques reach similar groups of respondents (which do not include "hard-core refusals"[34]). These results hold out little hope that incentives may reach refusals who cannot be converted by more traditional means. Token incentives do appear to speed up response relative to follow-up alone, and this effect may be useful in certain circumstances[35].

Token cash incentives[36] in mail surveys have been shown to have little effect at moderate to high response rates (i.e., 80% or higher) when the subject matter is "salient" to the respondent, but may have a useful effect when low salience depresses response below this level and low salience cannot be increased by other means (advance notice, special follow-up, etc. -- see FASQ #2)[37].

The issue of bias associated with incentives has been narrowed considerably. Non-cash incentives and small ("token") cash incentives such as those used in mail surveys do not appear

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[33] The typical pattern suggests that token incentives increase initial response and at the first follow-up, but additional waves of follow-up close the gap.

[34] While "refusals" may be defined in many ways, for practical purposes "hard-core" refusals can often be characterized as respondents who do not respond to any form of follow-up.

[35] It should be noted however, that short response periods may be difficult to justify under 5 CFR 1320.5(d)(2).

[36] Typically $1 to $3 enclosed with the questionnaire

[37] Baumgartner at al, op. cit.

a greater amount of time than the standard interview[29];

doing something painful or embarrassing;

doing something that requires some effort (e.g., taking a test);

having to go to somewhere special to participate (e.g., a clinic); or

involving some risk to the respondent[30].

3. Incentives would be considered if the respondent incurred an out-of-pocket cost; or if the survey was too intrusive; or if the survey was aimed at a hard-to-reach population.

Participants felt that hard-to-reach really meant hard-to-interview. This category could include those who are hard to encourage to cooperate, and therefore initially refuse. In such cases, incentives might be effective. Participants felt incentives would not be effective for those who are hard to find[31].

Participants also included in the hard-to-interview category those who are difficult to reach by mail, those who must be kept in a sample (such as members of a control group), and those disenfranchised from society. For all except the hard-to-find, there is already a large cost involved in locating respondents for interviews, encouraging them to respond, or keeping them in the sample. Since the monetary outlay for these cases is so high already, incentives might be very cost-effective for these groups.

4. Incentives would be considered only if the sponsoring agency could show that their use would minimize the mean square error per unit cost.

Participants,viewed policy four as a rule for how to evaluate policies one, two, and three. Participants felt it was important to point out that the mean square error needed to be viewed relative to the planned use of the data[32].

5. Incentives would be used to compensate respondents for their time and effort in participating. In this policy, response would not be viewed as something that is part of one's civic duty, but rather as an effort for which the incentive would compensate.

Generally, acceptance of this policy would imply that the "social contract" has broken down and that the government should pay for the opportunity cost of a respondent's time. While participants did not

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[29] OMB has consistently challenged data-collection strategies based on long interviews unless testing shows that the length is not perceived as burdensome, in which case, no incentive is needed. See also the policy statement concerning "shifting" burden to taxpayers.

[30] Exposing a respondent to risks is more likely to be grounds for disaproval, rather than a justification for payment.

[31] Participants were apparently not aware of the Korachsky-Mallar ("bill-collector's") stratagem for locating "hard-to-find" respondents. The "hard-to-reach" concept is probably overbroad, in that it is often confounded with interviewer bias and actual comparisons have shown incentives to have more effect with less bias among groups that are generally regarded as "easy to reach" (young people rather than the elderly, dominant rather than minority groups). The concept of "low salience" (also broad) is more consistent with recent findings, and also provides a basis for weighing both incentive and traditional methodologies.

[32] The adoption of a mean square error criterion for weighing policies 1-3 above is prudent given the risk of bias associated with incentives, however it represents a very high hurdle for using such strategies. It implies that the incentive must be accurately tested for bias (which is a contributor to mean square error), and in some cases (e.g., interview surveys), the tests themselves have been substantially affected by biases (the preference of interviewers for payments).

After considering existing research, the group recommended a rather longer list of unresolved issues that were candidates for --

Further Research:

1. Although incentives can improve response, what is their effect on data quality? Is there a problem with item nonresponse? Can incentives have an effect on the interviewer which can lead to survey bias? Is it possible that repeated use of incentives or the use of incentives in repeated interviews of the same respondent can lead to bias?

2. Although incentives may increase response among initial refusals, can incentives do anything with the difficult or impossible to interview populations?

3. What is the effect of various levels of incentives? Is there a point where the incentive is so high it raises doubts in the respondent's mind about the sincerity of the survey.

4. What really motivates a respondent to answer?

5. Are the effects of incentives different for different population sub-groups (e.g., children, those over 80 years old, young Black males)?

6. What is the public's reaction to using tax money to pay respondents to Federal Government surveys?

7. What is the effect of paying some, but not all respondents?

8. What kinds of incentives work for institutions, and how do those incentives vary by type of institution?

9. Can Federally appropriated funds be used to pay incentives to respondents to Federal Government surveys?

10. What are the long range effects of paying incentives? Could their isolated use now lead to a situation where they are so expected as to become mandatory in the future, thus raising the total cost of taking a survey?

Of most importance to OMB, the group reached some consensus on a series of incentive policies (ranging from the narrowest to the broadest) and criteria for choosing among them --

1. Incentives would be considered only if the respondent incurred an out-of-pocket cost.

There was considerable discussion about whether this policy really provided an incentive or simply offered an expected reimbursement. In general, participants did not want a strict accounting by respondents (i.e., unless you produce a taxi receipt, you do not get paid). Rather, participants viewed such an incentive as a lump sum payment when respondents were expected to incur a cost. How the money was used was up to the respondent.

2. Incentives would be considered if the respondent incurred an out-of-pocket cost or if the survey was too intrusive[28].

The discussion of this policy focused around trying to define intrusive. Generally, this was viewed as meaning there were unusual demands made on the respondent which could include:

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[28] The use of the phrase "too intrusive" is unfortunate, since this is a criterion cited as grounds for disapproving a survey under the PRA. However the specifc examples that follow address more neutral "burden" issues.

2. To engender good will when there is some evidence that cooperation is deteriorating[24].

3. If other organizations routinely pay incentives to the target populations (e.g., doctors).

4. If there is a special target population for whom encouragement will have little if any chance of working, particularly if other survey organizations pay the respondents in that group[25] (e.g., prostitutes, the homeless).

5. If there is a lengthy field period (e.g., a commitment over time for a panel survey)[26].

6. If the target population is a small group that is often surveyed, meaning any particular respondent is liable to be in somebody's sample frequently (e.g., deans of universities, CEO's)[27].

This list was narrowed after considering and discussing the body of existing research. Some consensus was reached on the following --

Findings:

1. Incentives do work in increasing response rates, particularly in mail surveys. Most participants read the literature to show that incentives are usually positive or have no effect. The evidence on personal interview' surveys is not so clear.

2. Prepayment of an incentive is much more effective than promise of a payment, even when the promised postpayment is relatively large.

3. Evidence from one private sector participant indicated that incentives work better in some lesser developed countries (Mexico, Italy) than in the U.S. and Western Europe.

4. Incentives are effective when the respondent has to exert some special effort or incur some cost (e.g., take a test, collect records from the files).

5. Increasingly, surveys, though not many Federal Government surveys, use incentives of one kind or another.

6. Incentives have proven effective in getting past "gatekeepers" of certain professionals (e.g., doctors).

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[24] The "good will" effect entails substantial risk of bias, particularly when the purpose of the data collection is program evaluation. Further, the good will effect has been verified for surveys conducted by private (for-profit) companies, but a substantial "backlash" has been demonstrated when the payment is made by a "non-profit" sponsor (e.g., when the payment is made from public funds or from funds set-aside for eleemosynary purposes).

[25] The experience of private survey organizations, referenced in this and the previous item, cannot be relied on generally, given the large differences in public response to private and government surveys, e.g., the "legitimacy" effect enjoyed by the government (see FASQ #1) and the "backlash" effect noted in a previous footnote. This assumption is frequently proposed without testing where there is a large gap between the socio-economic of interviewers and respondents -- a situation that presents substantial risks of interviewer bias.

[26] The literature generally shows incentive effects to be short-lived. The exceptions are 1) the EIA experiment described in a previous section that showed some positive effect in a short-term (two contact) panel, 2) and the recontact strategem described by Kerochsky and Mallar for locating missing panel members.

[27] On its face, this rationale conflicts with PRA policy and objectives concerning "duplication." Just as incentives cannot be justified by unnecessary burden, they cannot be justified by unnecessary duplication. An alternative policy that is consistent with the PRA has been developed by the National Agricultural Statistics Service (for example) in its Integrated Survey Program that coordinates sample selection to limit the number of times any one respondent is surveyed.

The 1993 Symposium

This Symposium brought together a wide spectrum of survey practitioners from the government and the private sector. To encourage wide ranging discussion, participants were initially asked to develop a list of reasons why incentives might be considered. These reasons have been organized into three categories for further discussion --

I. Reasons that have been approved by OMB generally, or in certain circumstances[21] --

1. If there is any out-of-pocket cost to the respondent (e.g., transportation cost to the interview site, baby sitting costs).[22]

2. When there are unusual demands or intrusions on the respondent (e.g., lengthy interviews[23], keeping a diary, having a blood sample drawn, taking a test that could prove embarrassing).

3. When there is a good likelihood a gatekeeper will prevent the respondent from ever receiving the questionnaire.

4. If the population is a control group in an important (and perhaps expensive) study where it is imperative to keep most respondents in the control group sample or the result of the whole study could be vitiated. (salience problem)

II. Reasons that directly conflict with budgetary policies or PRA objectives (or raise constitutional or ethical concerns) --

1. To compensate a respondent if there is risk in participating (e.g., asking questions about illegal activity).

2. When sensitive questions are being asked.

3. If the respondent is a small business or a nonprofit institution in a voluntary survey and the respondent perceives some cost and burden to participating.

III. Reasons that were speculative and/or at some variance with methodological findings --

1. To encourage hard core refusals to respond,.especially in small subpopulations of interest. Using current nonresponse imputation models without adequate representation from the hard core refusals could bias survey results enough to affect the quality of the eventual data.

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[21] Incentives are considered only if traditional methods have been exhausted. This differs substantially from some private sector practice, where incentives are often used as an alternative to multiple contacts ("follow-up").

[22] Text reprinted in small font in this section is from the Final Report of the 1993 Symposium on PROVIDING INCENTIVES TO SURVEY RESPONDENTS, submitted to the Regulatory Information Service Center under General Services Administration Contract Number GS0092AEM0914 by the Council of Professional Associations on Federal Statistics, September 22, 1993

[23] The "lengthy interview" criterion is not generally useful, since the PRA requires that "unnecessary burden" be eliminated. In this case, a payment may not be used to avoid reducing burden.

Another feature of the NALS design was its proposed "counterbias" strategy -- to use incentives to counteract bias due to the expected refusals among low-literacy respondents[5]. The test found a small but significant drop in literacy scores in the incentive groups relative to the no-incentive group. This appeared to confirm the hypothesis, but further examination raised some problematic issues. The distributions of literacy scores in the incentive groups showed some fattening of the lower tails, but they also showed an unexpected thinning of the upper tails relative to the no-incentive group (i.e., the more literate paid respondents did not perform as well as their unpaid counterparts.[6]) OMB analysis found a significant change in the results due to an insignificant improvement in response confounded with a very troublesome (but also insignificant) performance bias.

Results of this kind abound in the literature -- large cash incentives clearly change results, but the contribution of bias is not investigated. This, coupled with the well-known effect of publication bias (results that purport to show a significant effect are more likely to be published, while "no-effect" results are not) argue strongly against accepting published results as a "reason" for using cash incentives. Following the NALS experiment, another cash incentive experiment was performed by the same data collection contractor in another major study. In this case the cash incentive had a small (but not significant) adverse effect on response -- the results were not published. Even the strong age cohort effect recently identified by Don Dillman could not be replicated in a subsequent study [Shettle, Mooney] of a different target population[7].

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[4] In a meeting at OMB, Joseph Waksburg noted the possibility of a backlash related to incentive level (cooperation may turn to suspicion as incentive levels rise) that might vary with socio-economic status or the perceived value of money.

[5] The assumption was that persons with lower literacy would be less willing to participate in the study and thus the lower end of the distribution of respondent literacy scores would be truncated or attenuated relative to the true distribution in the population. This would mean that the average score measured among respondents would overstate the true average in the population. It was thought that incentives might induce low-literacy individuals to participate and thus fill out the lower end of the distribution.

[6] This second effect is consistent with the results of the Hansen experiment [1980] that found that paid respondents did not perform as well as unpaid respondents. Because of the complex procedure for scoring literacy, such an effect is very difficult to quantify precisely, but when modelled as a simple distributional shift, it appeared to account for about half of the observed drop in the average literacy score. Furthermore, it appeared that if such a confounding effect could be measured separately, then neither this effect nor the low-literacy gain effect would be large enough to be statistically significant.

[7] "The Effectiveness of Monetary Incentives in Government Surveys," papers by Baumgartner, Dillman, and Shettle (Groves and Coffey, discussants) August 1996 Joint Statistical Meetings

The National Center for Education Statistics conducted an experimental pretest of the **National Adult Literacy Survey (NALS)** to determine the effect of incentive amounts of $0, $20, and $35. The review of the results by NCES, their contractors, and OMB provided an object lesson in the problems of evaluating the effect of incentives.

The survey consisted of an interview stage followed by an "exercise" stage comprising a battery of three literacy tests. This design is important because it reflects a trend toward using performance tests rather than relying exclusively on facts and opinions reported by individuals. Performance tests are considered more objective than traditional interview methods, but they can be adversely affected by atypical participation or atypical performance.

The NALS test data appeared to show significant differences (nominally about 10%) in completion rates between incentive treatments and the no-incentive treatment, but the details were troublesome. For example, the reduction in initial refusals attributable to incentives was only 1% to 2%[1]. Subsequent refusals and partial completions among those who had agreed to perform the exercises produced additional differences of about 3%[2]. Thus the total effect of incentives in reducing refusals and incompletions was about 4% or 5%, straddling the threshold of significance. The remaining differences appeared to come from "randomized" factors (noncontacts, language or physical problems, and other ineligibles) that should have appeared equally in all three incentive treatment groups. Since the treatment groups were well matched, this suggested the possibility of interviewer bias (i.e., the treatment was affecting interviewer behavior).

The completion rate appeared to increase with incentive amount among non-hispanic whites and younger persons but fell among persons over 64 years of age and was mixed among blacks and hispanics[3]. Discussions of these results did not produce a satisfactory explanation of adverse effects, but there was some speculation that the large amounts offered may have led some respondents to believe that the task would be unusually difficult or unpleasant[4].

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[1] Initial refusals numbered 90 of 730 for $0, 83 of 740 for $20, and 85 of 818 for $35.

[2] These additional losses (late refusals and incompletions) at the exercise stage were 38 for $0, 12 for $20, and 13 for $35.

[3] With an overall sample size of about 2300, none of the subgroup differences were significant at the levels required for multiple comparisons. It is notable, however, that another agency subsequently cited the "overall" difference in response reported in the NALS test in support of using similar incentives in a survey of elderly individuals.

modest incentive payments in conjunction with physical examination requirements and has shown diminishing returns for payments over $10[16]. More recent recent research has shown some positive results at higher incentive levels and raised some questions regarding the confounded effects of incentives on interviewers[17].

There has been at least one successful use of incentives to improve **retention in a short-term panel**. An experiment performed by the Energy Information Administration on a panel of over 5000 respondents found that an incentive payment of $5.00 per month of diary-keeping was the optimum amount for retaining respondents in the subsequent round of diaries six months later[18]. The diary was a gasoline purchase log which was treated as an aid to accurate recall (the information was collected in a telephone interview).

OMB has not generally accepted the common assumption that incentives are needed to insure participation of "**economically disadvantaged**" persons. This assumption, though widely held, has rarely been tested. A controlled experiment performed by Gelb (1975) showed that a small cash incentive was much less effective in a lower class black neighborhood than in a middle class white neighborhood. More recently, a test of the National Adult Literacy Survey (NALS) (see the case study on testing) showed nearly identical response rates without incentives for the white non-hispanic subgroup and the more disadvantaged subgroup consisting of black and hispanic respondents[19]. Recent unpublished incentive experiments by the Census Bureau also showed little response improvement in the poverty stratum[20].

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16 Both higher incentive levels and variable level strategies have been examioned in documents submitted to OMB to support clearance requests.

17 Ezzati-Rice, White, Mosher, and Sanchez, article at p. 225 of Statistical Policy Working Paper 23, Part 2 (particularly the commentary on the YBRS at p. 238).

18 Background Information on EIA's Household Transportation Panel, June 1979 - Sept. 1981. Appendix A.

19 The raw response rates differed by about 1%.

20 These results reported to OMB should be viewed with caution since the experimental design contained some anomalies and treatment groups were not well-matched. Further, the base response rate was over 90%, an area where incentives rarely improve performance.

There are some common circumstances where use of cash or gift incentives appeared to be relatively safe[14] -- when the incentive is linked to some task or element of the design other than answering questions and when it was of modest value (token amounts not perceived as value-of-time and unlikely to motivate bias). The risks of cash incentives also appear to be low where they are perceived as offsetting "out-of-pocket" costs or when they are used to solicit participation in objective physical measurements (where the actual data cannot be affected by the respondent's personal reaction to the incentive).

Gift (noncash) incentives appear to be effective if they are perceived as supporting the objectives of the survey (e.g., calculators or measuring devices if the survey involves such tasks) or if the incentive consists of payment for a service or procedure that the respondent did not seek on his own initiative (e.g., paying the cost of a medical examination). Well chosen noncash incentives also have the advantage reported by Statistics Sweden[15] that their (current dollar) cost may actually decline in the face of inflation.

Precedents and Problems under the OMB Rule.

The exception strategy required by the statistical policy concerns cited above has burdened both OMB and Federal agencies with a difficult and staff-intensive commitment to case-by-case review of incentive proposals. This course of action has been reinforced by findings that many results in the literature are not replicable **[Fitzgerald and Fuller, 1982]** -- general appeals to precedents are suspect. A few agencies have established precedents for certain methods and particular surveys, but new territory is very difficult to explore.

There are two broad types of surveys where cash payments have become the norm -- surveys of persons in "laboratory" environments, and surveys involving substantial objective physical measurement. Examples of the first category include focus groups (where the payment covers nominal out-of-pocket costs of participation) and some cognitive research (where respondents are, in fact, paid experimental subjects). Examples of the second type include EPA use of a respondent vehicle for two weeks of testing in an emissions laboratory, EIA testing of infiltration and heat transfer in a respondent's home, and physical (medical) examinations of individuals or their tissues, fluids, etc.

The experience of the National Center for Health Statistics with the **National Health And Nutrition Examination Survey** has been reviewed over a period of years. It supports use of

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[14] The concept of what is "safe" must be approached with great caution. Furse and Stewart (1974) reported opposite reactions to incentives offered by non-profit and for-profit survey sponsors (respondents objected to payments from non-profit survey sponsors but had no objection to similar payments from commercial survey organizations). In the context of government-sponsored surveys, "safe"is intended to mean free from such adverse reactions or other potential biases.

[15] Reported in an article called "An Experiment with Incentives" by Hakan Lindstrom in the Statistics Sweden 1991 R&D Report entitled "The Family Expenditure Survey".

activities, it is inconsistent with the Act. This guideline is therefore an appropriate tool for enforcing the Act.[12]

As also noted in the preamble, this rule implemented only the paperwork clearance and control authorities of the Act -- it did not implement other authorities "such as statistical policy and coordination". The rule asserted policy, but both technical and practical statistical considerations were brought to bear on the determinations required by the rule, particularly the demonstration of "substantial need". Throughout the 1980's some reasons to use incentives came to be regarded by OMB as relatively safe. Reflecting this experience, the 1995 revision of the Paperwork Rule changed the presumptive prohibition to a requirement to justify any strategy that relied on incentives [5 CFR 1320.5(a)(1)(iii)(D)]. Another strong influence on current policy was a Symposium on Providing Incentives to Survey Respondents held in 1993.

The Issues

It is widely assumed that cash or gift incentives produce benefits in particular cases. Tupical premises are that incentives may improve rapport with the data collector or offset resistance to unusual or inconvenient tasks. On the other hand we also have seen some important risks. In some instances, incentives may degrade rapport with the data collector or may induce volunteer or response bias. The very popularity of incentives with interviewers raises the difficult issue of interviewer bias. In some cases incentives may take on the character of an independent micro-economic experiment whose results are confounded with the results of the survey, i.e., they may act as a stimulus unrelated to the purposes of the survey that may alter (bias) responses (this risk also extends to "counterbias" strategies).

In some cases it appears that incentives may produce net cost savings by reducing the number of callbacks, but this effect has been somewhat unpredictable. In at least one case callback savings justified incentives of $20 or more, but in another case callback savings failed to offset the cost of a $5 incentive[13]. When the effect cannot be predicted reliably, there is an additional cost to perform tests to see whether (or at what level) an incentive is cost-effective. This "opportunity cost" stacks up against incentives (i.e., to reduce overall costs, the incentive gain must not only offset the cost of callbacks but must also offset the cost of testing incentives).

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[12] Ibid. p. 13673

[13] In the NALS test (described in a later section), the $20 incentive appeared to pay for itself in reduced callback costs in a high unit cost survey (over $100 per respondent), and the $35 incentive was a "toss-up". However, in the experiment conducted for the 1987 National Medical Expenditure Survey [Beck et al, 1987], a $5 incentive payment failed to pay for itself in reduced callback costs in a design with lower unit costs and burden.

An advance letter explaining the survey and requesting a phone interview is one approach that has gotten around screening by answering machines. In this case the dynamic is still that of the interview.

The Census Bureau is experimenting with sending abbreviated mail questionnaires to nonrespondents who have eluded all contact by visit or phone. One would expect potential mode differences here, but that is better than no response at all.

Both NASS and BLS conduct recruitment visits with officers of companies selected into rotating survey panels to explain the importance of the survey and to meet everyone in the chain of command from the CEO to the person who will fill out periodic mail questionnaire. The Census Bureau has used similar visits very effectively to recover large companies that have dropped out of mail surveys.

The Bottom Line

In the 1990's, well-designed mail surveys are the clear winner whenever the content of a survey can be adequately communicated by the written word. They rival personal interview for the highest response rates, but have lower bias and lower (or much lower) cost than their competitors. Personal interview methods have larger potential bias and much higher cost, but have a response advantage over telephone interviews and also permit the use of some techniques (e.g., visual aids) that are impossible over the phone. Some special forms of Computer Assisted Personal Interviews also have advantages in collecting sensitive information -- the respondent operates the laptop while the interviewer is available to provide clarifications if requested (thus limiting the potential for interviewer bias). The pure telephone interview (e.g., Random Digit Dialing "cold calls") comes in second or third on all counts, but phone contacts can be very effective in a mixed mode strategy or when there is no reasonable means to build an address list for conducting a mail survey.

FASQ #4 -- Incentives

History of OMB Incentive Policy

Prior to the adoption of the PRA implementing rule in 1983, the unwritten policy of the Office of Management and Budget (OMB) permitted payments to respondents in some circumstances. This practice was sometimes proposed by private-sector data collection firms and the issue was addressed in the context of contracting for statistical services. Statistical Policy Working Paper 9 - "Contracting for Surveys"[10] acknowledged examples of "reasons" why an agency might propose financial compensation to respondents -- specifically, when prior studies showed it was essential to the success of the project, or when the data collection called for a significant amount of work on the part of the respondents.

In September of 1982, OMB issued a Notice of Proposed Rulemaking which contained guidelines that included a prohibition against respondent remuneration, as well as a "reasonable need" test for exemption from any of the guidelines. Because of public criticism that this test was inadequately stringent, OMB adopted the "substantial need" test in its final rule issued on March 31, 1983, so as to place "the burden on the agency to justify deviation from the guidelines."[11]

The preamble to the final rule described the guideline on remuneration as follows:

> Paragraph (e) generally prohibits remuneration of respondents, other than contractors or grantees, for responding to collections of information.

The preamble noted the "mixed" public reaction to this guideline and specifically noted the criticism submitted by a "private research organization", but went on to assert the rationale for retaining this guideline as follows:

> However, the purpose of the Act and this rule is to reduce the overall paperwork burden, not to shift it from respondents to taxpayers at large. To the extent that remuneration induces respondents and agencies to engage in unnecessary paperwork

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10 SP Working Paper 9 was begun before passage of the Paperwork Reduction Act and was still under development while OMB considered its draft rule which proposed a "reasonable need" test for exemption from the prohibition of respondent remuneration. This working paper was not published until three months after the more stringent "substantial need" language had been adopted, but it reflects the earlier policy.

11 Federal Register, Vol. 48, No. 63, March 31, 1983, p.13672 (preamble to the final adoption of 5 CFR Part 1320, signed by Christopher C. DeMuth, Administrator of OIRA).

FASQ #5 -- Statistical Classifications and Data Standards

Classifications Generally

Simple classifications are frequently used in many different kinds of data collections. These often take the form of response categories explcitly defined on a data collection form, e.g., income categories for households such as $0-5000, $5000-10000, etc.). When these classifications are justified on the basis of specific program needs, they are routinely reviewed and approved in the PRA submission for that data collection. In these cases the "classification" must be clearly defined on the form or in instructions included with the request for information. Statistical classifications, by contrast, are designed and managed to support the full range of research and analytical objectives in a specific subject matter area rather than the needs of a specific program.

Most classifications are not statistical classifications and they can be defined to suit the needs of a specific program or even a specific data collection. Such classifications must meet the usual tests of practical utility and burden, and more sophisticated requirements need not apply. Such classifications must be justified by explicit programmatic uses and must be completely documented in the agency form and instructions. Thus if an agency asks a respondent to report information in terms of specific codes or categories, those codes must be justified by specific program uses and all information required to determine the correct code or category must be supplied on the form or in an instruction manual.

Principles and Requirements of Statistical Classifications

Statistical classifications, by law, must conform to policies, principles, standards and guidelines established by OMB. Since 1974, the general criteria for evaluating such classifications (and other statistical standards) have been: efficiency, minimization of burden, stability ("continuity" and/or "comparability"), and statistical accuracy. The burden and stability criteria were established much earlier, but all four of the current criteria were spelled out in the "Objectives" section of the 1974 revision of OMB Circular A-46, and were retained in subsequent guidance. Appendix B of the 1987 Standard Industrial Classification Manual (or Appendix D of the 1972 edition) provides an example of how these criteria are applied and elaborated in a particular case.

These criteria are the basis for determining the practical utility of a statistical classification. Meeting the efficiency, burden, and accuracy criteria usually requires developing a consensus on appropriate concepts and decision processes consistent with the general criteria, and invariably requires an evaluation of each element in the classification. The stability criterion is usually addressed by anticipation of needs to be met by the classification and committing to

a prudent revision schedule. Typically, revisions have been no more frequent than once every ten years, though the Metropolitan Statistical Area classification has a provision for minor annual revisions based on changes in previously defined variables.

Classifications that do not meet these standards are not supported by OMB. For many years OMB defined a classification known as the Standard Industrial Classification of Enterprises. After the revision of 1977-78, continuing changes in the economy made it increasingly difficult to define an accurate enterprise classification and thus it was not included in the 1987 revision of the Standard Industrial Classification. Likewise there are some classifications developed by international organizations that do not meet OMB standards for accuracy, stability, or burden and thus may not be used as statistical classifications.

The Downside of Classifications

All classifications reflect compromises -- between stability (comparability) and currency, between efficiency and lost detail, and between burden and accuracy. Many people can recognize "loaded" questions or "wired" analyses, but classifications also have the power to filter or color reality. The process of developing statistical classifications weighs these trade-offs and solicits input from the full spectrum of users and suppliers of information. Reviewers must be alert for classifications that may be tailored to support particular advocacy positions. The tell-tale signs are: 1) categories that seem well attuned to policy concerns but which cannot be accurately reported and 2) categories that must be revised frequently. Such classifications have little value for serious research and must be tested for practical utility against the explicit needs of the program they support.

Statistical Classifications adopted by OMB

Geographic:

Federal Administrative Regions -- required for administrative use and recommended for statistical use. Exceptions have been recognised generally for regions defined and widely used prior to the adoption of the standard (e.g., Census Regions).

Metropolitan Areas -- required for statistical use. A notice and comment process consistent with the Adminstrative Procedure Act is usually required if an agency proposes adoption or modification of this standard for administrative uses. The classification defines areas in terms of contiguous counties (or equivalent subdivisions in New England). Principles for determining inclusion are reviewed and revised as appropriate every ten years through an extensive comment process. New principles become effective when data from the decennial census becomes available and remain in

effect for ten years. Interim additions based on changes in the variables defined by the principles are made in June of each year.

OMB also supports other stable, widely-used geographic classifications such as Census regions and districts, USPS ZIP code areas, and political (State and County) boundaries.

Economic:

North American Industry Classification System (formerly the **Standard Industrial Classification of Establishments**) -- required for statistical use. A notice and comment process consistent with the Adminstrative Procedure Act is usually required if an agency proposes adoption or modification of this standard for administrative uses. Major reviews and revisions of this classification have occurred every ten to fifteen years (1972, 1987, 1997 -- there was also a more modest update in 1977) through an extensive comment process. The current revision (NAICS) reflects a major effort to rationalize the industrial classification systems of the trading partners of the North American Free Trade Agreement.

Standard Occupational Classification -- required for statistical use. A notice and comment process consistent with the Adminstrative Procedure Act is usually required if an agency proposes adoption or modification of this standard for administrative uses. Note -- a separate classification known as the Dictionary of Occupational Titles is manitained by the Department of Labor for administrative uses -- this classification is more extensive and revised much more frequently.

Demographic:

Definition of Poverty -- required for both administrative and statistical use. The administrative definition of poverty is recalculated by the Department of Health and Human Services each year based on a standard data series produced by the Census Bureau. The cash-income concept and inflation adjustment methodology of that series have not been significantly revised since its inception.

Race and Ethnicity -- required for both administrative and statistical use. This classification includes two optional formats. More detailed classifications are permitted as long as they can be accurately aggregated to one of the standard formats.

Fields of Science and Engineering (R&D) -- required for statistical use. Compatible classifications of educational curricula are permitted.

Statistical Data Standards

Labor Force & Unemployment -- required for specified statistical uses. Specifies a standard method for reporting current employment data.

Population data -- required for specified statistical and administrative uses. Limited exceptions generally require explicit OMB approval. Specifies standard data series for population estimates. Note -- this standard has been incorporated in several statutes.

Wage Reporting -- required for specified statistical uses. Specifies a standard method for reporting current wage data.

Note: For standards and classifications that are required for administrative use, deviations from an applicable standard in a regulation will frequently provide any injured party with grounds for a suit against the responsible agency unless an exception has been requested and approved.

Reviewers should become familiar with the requirements associated with each of these classifications and data standards -- e.g., all are required for some class of statistical uses, while some have stringent limitations on uses for regulatory or administrative purposes.

FASQ #6 Methodological Testing; Pilot Studies and Pretests

New Requirements and Old Practices

The PRA of 1995 contains new provisions that require testing in certain situations. Agency practices in conducting such methodological tests have varied in the past. Some agencies do a complete and effective job of testing before committing to final plans for a data collection -- this is accepted practice in many statistical agencies. Some agencies, however, perform pretests only to confirm the feasibility of some strategy to which they are already committed -- an approach that may severely limit the value and utility of the testing. Finally, in some instances, the term "pilot test" or "pilot study" has described poorly planned data collections where there is no commitment to perform rigorous full-scale data collections.

How to Review These Tests

The utility of these tests is completely methodological, i.e., if they do not resolve methodological problems then they are not likely to have any practical utility. Furthermore, such tests lack utility unless the data collection that they support is likely to have practical utility -- since such testing comes late in the development process, the reviewer can usually determine if success of the test will assure the utility of the main data collection. Note that to perform an effective review, the relationship of the test to the main task must be fully documented.

A full-blown pilot or pretest should include alternative treatments for any element that is unproven. The options and the actions that would result from all possible outcomes should be clearly defined. It also should be clearly established if some outcomes mean that the main data collection should not proceed.

A confirmatory pretest is appropriate only when the feasibility of the design is in doubt and other methodological issues have been substantially resolved. If the soundness of methods or procedures has not been demonstrated, then a feasibility test of those methods is premature -- the outstanding issues should be resolved first. If there does not appear to be a significant feasibility issue, assure that the main task will actually be performed.

Always be alert for a poorly designed study masquerading as a pilot or pretest. The telltale signs are often:

1) a large number of questions beyond those that may justify testing;

2) relatively large sample sizes or no justification for the sample size;

3) vague or nonexistent methodological hypotheses; or

4) failure to include testable options.

Remember that lack of funding for the main task also impairs the practical utility of a pilot or pretest.

Innovative Strategies

Methodological testing, at its best, is an accelerated learning process. Some of the most valuable lessons are due to unanticipated outcomes. Thus even the most carefully planned research is not immune to surprises. Several statistical agencies have developed innovative strategies to deal with this aspect of methodological testing. In the 1980's Dr. Robert Groves worked with the Census Bureau to build some useful tools for addressing problems that surface late in the planning cycle for surveys. The key element was a generic clearance for a variety of special tests that can be performed quickly to objectively analyze and repair problems in a near-final survey. Cognitive laboratories in the Census Bureau, the Bureau of Labor Statistics, and the National Center for Health Statistics have also been used to discover and address problems that have resisted resolution by other means -- generic clearances have facilitated use of this resource to improve the quality of surveys.

When to Pilot Test

Separate pilot or pretests are almost always preferable to combining testing into the main task. The only common exception is when a series of tests have already been performed and the results of those tests have raised one or two new issues to be resolved (note however that some of the innovative methods described above can often deal quickly with such surprises separately before the main survey is fielded). If an agency frequently requests approval for combining pilot tests with the main task, this pattern may reflect planning processes that are inadequate. Poor planning undercuts the effectiveness of the PRA review process as well as any useful input from the public comment process, and increases the likelihood that results will be flawed and lack utility.

Since combining tests with the main tasks entails unnecessary risks, some precautions are in order. Be sure that the main task will not proceed if the test fails -- spell out specific criteria for a successful test and require clear evidence that the problems have been resolved. Otherwise further action may be needed under 5 CFR 1320.10(f).

FASQ #7 -- Generic Clearances

Background

A generic clearance is a master plan for conducting one or more data collections (which we call "tasks"). The review of such plans occur in two stages -- a full review of the overall plan plus a quick review of the actual details of each task. Generic clearances originated under the paperwork review authority of the Federal Reports Act of 1942 (FRA) and were further explored under the Paperwork Reduction Act of 1980 (PRA). During the 1980s, OIRA supported several experiments to sharpen the concept and developed some general principles under which such data collection plans could be efficiently managed. Some of these principles have been significantly affected by the 1995 amendments to the PRA.

General Principles

NEED FOR A GENERIC STRATEGY -- This approach should only be considered when the need for the data collection can be demonstrated, but the exact details of individual tasks cannot be determined until shortly before the data are to be collected.

> Examples include: methodological tests to correct problems discovered in a pilot test before the full-scale data collection begins; or focus groups to explore customer service issues that may surface from time to time.

LIMITED TYPES -- The data collection tasks must be of a type that can be reviewed by OIRA Desk Officers alone and preferably by a single Desk Officer.

> Program evaluations and some other types of data collections are routinely provided to program analysts within OMB for review and comment, and thus cannot be approved on the accerated schedule required by the generic strategy.

CONTROVERSY OR SPECIAL CIRCUMSTANCES-- The general plan should concern subject matter and methods that are free of any controversy or any features that require particular justification and review under the paperwork rule.

> Any special justification or controversy arising at the task stage can substantially extend the time required for the review, thus defeating the purpose of the generic strategy. Furthermore under the new law, controversies at the task stage effectively deny the public the opportunity to comment guaranteed by the 1995 PRA and thus can only be considered if the task is withdrawn from the generic package and resubmitted through the normal clearance process.

COMPLETE PLANNING -- The plan must cover intended collections in enough detail that the consistency of each task with the plan is transparent.

> Statistical methods and sample designs, for example, must be spelled out, reviewed, and approved in the main plan -- these often require consultations and cannot be completed on the quick schedule for individual tasks.

These general principles should be addressed in both the Federal Register Notices required by statute and in the justification submitted to OMB for review.

Some Examples

Generic clearances usually involve a well-defined class of low-burden data collections that are not fully documented until they are actually used. Typically such plans have included a set of agreements negotiated between the sponsoring agency and OMB, covering limitations on methods and usage, a burden cap, a periodic reporting requirement to update the OMB Docket, and a commitment by OMB to review any specific application quickly. The review process occurs in two stages: 1) review of the overall plan; and 2) review of individual tasks for conformance with the plan. The 1995 amendments to the PRA require more careful policies in the first stage of review than were pursued under the old PRA. However, some of the classical examples are entirely compatible with the 1995 PRA.

1) Generic Clearance for Qualitative Studies

This model has been used by the Census Bureau for questionnaire development and testing, by the Bureau of Labor Statistics for cognitive laboratory experiments, and by the Internal Revenue Service for a program of focus groups. The terms of the agreements worked out with these agencies have proven workable for both the agencies and OMB. The terms include --

- A burden cap. The agency proposes a total annual burden that will be imposed by studies conducted under the generic clearance. Individual applications are tracked against the burden cap. The wider the range of activites covered by the burden cap, the more information must be provided to the public and OMB to justify that cap (e.g., 50 identical surveys can justify substantial burden with a single detailed description, 10 groups of 5 identical surveys each, requires 10 detailed descriptions to justify the same overall level of burden.)

- Specified methods. The agency proposes the type(s) of data collection(s) to be performed and the method(s) to be used, with particular attention to those features and commitments that assure consistency with the guidelines of the Paperwork Rule (5 CFR 1320). All of this is spelled out in detail for both public and OMB scrutiny in the basic clearance package and/or the required Federal Register Notices.

- A periodic reporting requirement. This allows tracking of performance relative to the burden cap and updates the public docket by demonstrating actual results achieved. The frequency of such reports is negotiable. Such summaries must be available for public review when the master clearance is submitted for review (either as an extension or a revision).

- Quick-turnaround OMB review of specific applications. The agency submits information on each specific application to update the public docket prior to each actual data collection. OMB agrees to a quick-turnaround review of each submission for consistency with the master clearance and to assure that it does not raise any controversies that have not been presented for public comment.

2) Generic Clearance for Quantitative Surveys

Quantitative surveys (i.e., those that must support quantitative estimates) usually must meet more stringent standards than qualitative studies and are more likely to be tailored to a specific task. For these reasons, the models for generic clearance are fewer and vary from agency to agency. Two examples that have been used successfully were developed with the National Park Service and the Internal Revenue Service. Both examples include a burden cap as described above, but they differ in most other details.

The National Park Service model was built around a catalog of tested questions covering a broad spectrum of issues involved in operating a national park. The clearance also includes several approved methods (sample designs) for administering the questions to respondents. The components of this scheme were developed with considerable effort and extensive consultation with OMB to provide flexibility to the local managers of national parks. Using this tool, managers can quickly assemble surveys in "kit" form to address current problems and charge the reporting burden against the burden cap of the generic clearance.[39]

The IRS model was developed to support the agency's program of customer satisfaction measurement and is generally compatible with the 1995 PRA (except possibly in the area of specific description of sampling plans). It stipulates specific methods, including professional design, adequate follow-up, and a commitment to high response, that assure high quality statistics. The model covers opinion questions only and includes steps to ensure that response is perceived as purely voluntary. The other features are identical to the qualitative clearance model described above.

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[39] It should be noted that this approach, while conceptually elegant, initially had little input from the persons it was designed to serve. In the course of several years of actual use, park managers proposed a substantial number of questions that were not considered or tested for the original catalog.

3) Simplified Generic Clearance -- Customer Surveys

Not all generic clearance strategies have fared so well under the 1995 PRA. One case where the results are mixed is in the area of customer surveys. In 1993, OMB developed a simplified generic clearance process for simple[40] customer satisfaction surveys. This quickly became the largest class of generic clearances and has produced somewhat mixed results. The strategy involved a quick review for both the overall master plan and individual tasks. The combination of pressure for quick results and lack of experience in the agencies, coupled with a cursory review of the main clearance ("the plan") by OMB produced some situations where the agency turned out products that lacked utility. In contrast, the quick turn-around OMB review of individual tasks worked well in cases where the basic plan (the master clearance) was sound.

Because this type of generic clearance has become so common, and often involves agency personnel with little previous training or experience in data collection methods or the paperwork review process, a special section of this manual (FASQ #10) has been developed to help identify and avoid some of the common problems.

The 1995 PRA

Most generic clearance models were developed under the 1980 PRA which gave OMB considerable discretion concerning public input to data collection plans. The 1995 provisions for public comment require a more careful approach to generic packages. A generic request by its nature, does not permit potential commentors to examine many of the details of the tasks it covers. For this reason it is important that the generic plan describe these tasks as carefully and completely as possible. For the same reason, generic plans should not include any tasks that might raise controversies on which the public is entitled to comment. At a minimum this means that generic plans should not include any element that requires an exception or a special justification under the Paperwork Rule.

How to satisfy the new law:

1) The overall plan must be subjected to the full PRA process.

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[40] "Simple" customer satisfaction surveys are defined by criteria developed jointly by the National Performance Review and OMB. The criteria are outlined in OMB's Resource Manual for Customer Surveys (Section 5) and in NPR publications.

2) The plan and/or Federal Register Notice[41] must provide enough detail (complete descriptions of sampling plans, examples of nearly identical surveys performed in the past) to provide the public with a basis for comment on a par with a normal single-task clearance.

3) The plan must be managed so that there are no surprises or controversies that bypass the public comment process.

The first requirement is transparent and is a direct consequence of the 1995 PRA amendments. The other requirements address the problem of meeting the openness (public input) standards of the 1995 amendments.

When to use them

Generic clearance should be considered whenever an agency has both a need for fast response data collections and can develop plans for such contingencies that are consistent with the PRA. Examples include: 1) methodological tasks to correct problems between pilot testing and full-scale survey operations; 2) preliminary tests to sharpen the options for survey planning; 3) "go/no-go" tests to determine if any further data collection might be useful; and 4) small, targeted experiments to refine program operations (e.g., a continous program of customer satisfaction research).

How to use them

Both the OMB reviewer and agency agency IRM staff have a large stake in the adequacy of the generic clearance master plan. Time and attention devoted to the review of the plan will make the task review simpler and avoid questions at that stage concerning issues that should properly be subjected to public scrutiny and comment. OMB approval of the plan should be as explicit as possible. Any apparent abuses of the generic clearance should be brought to the attention of agency IRM staff. Controversies arising at the task stage are not only inconsistent with the theory of generic clearances, they are inconsistent with the the 1995 PRA which limits the discretion previously exercised by OMB to negotiate with an agency without public input.

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[41] For normal (single task) clearance requests, agencies sometimes use a relatively brief Federal Register Notice summarizing the proposed activity and offer to provide the complete package prepared for OMB review to potential commenters on request. OMB generally accepts this approach as satisfying the requirements of 44 U.S.C. 3506. For generic plans, many details may not be available in the OMB review package, and this may dictate that the Federal Register Notice address the statutory requirements more explicitly.

FASQ #8 < reserved >

FASQ #9 Issues in Opinion or Attitudinal Surveys

The Paperwork Reduction Act (PRA) specifically covers both matters of fact and opinion. Most data collections reviewed by OMB concern record-based information because most agencies have shown a strong preference for collecting this type of data. There are several reasons for this agency preference: 1) capturing previously recorded information often reduces the effort ("burden") required of a respondent; 2) this form of information is generally regarded as verifiable; and 3) the meaning of the "facts" solicited in this way is assumed to be clear.

Obtaining personal recollections is another form of information collection commonly used to gather facts that may not have been routinely recorded. This is also considered a low-burden technique, but it is subject, of course, to several kinds of errors. These have been studied extensively in statistical literature and usually require attention in the design of the survey.

OMB has reviewed and approved a large number of surveys containing subjective ("opinion") questions in recent years. Many of these were a by-product of total quality management initiatives and were designed as vehicles for understanding public perceptions about Government services. In addition to these relatively simple evaluations, OMB has reviewed and approved more sophisticated surveys designed to use respondent opinions and preferences to estimate such concepts as demand for recreation and other services. OMB has worked with agencies who have supported their proposals with research and has followed the research available from academic sources (see "Demonstrating Utility").

Each of these forms of information requires some degree of methodological research to be useful. Record-based information enjoys the largest body of research. Research on recalled information has often focussed on such issues as the relationship between the period of recall and the magnitude and frequency of recall errors. Research on opinion questions has been less extensive, but has been adequate for some specific uses. More general research on opinion questions has progressed more slowly. Commitments to do the necessary research have lagged behind the level of interest in using opinion or attitudinal questions. In evaluating new questions or survey instruments, OMB has increasingly emphasized proper testing of both objective and subjective survey questions. This policy has enhanced both the quality and responsiveness of data collection programs.

Standards of Review

Opinion questions are reviewed under the same standards applied to "factual" questions. There are a number of issues that an agency must address to justify an information collection plan under the standards of the PRA. Three of the criteria that often affect decisions on opinion surveys are:

1) defining the objectives to be achieved with the survey results (e.g., what is to be estimated or predicted and how are the data to be used for this purpose);

2) demonstrating the practical utility of opinion results for particular objectives; and

3) demonstrating the reliability of opinion results as statistical measures.

The problems these criteria address are not unique to opinion surveys -- one of the common problems faced in record-based surveys occurs when the recorded facts are not a good match with what analysts want to measure (e.g., the perennial dilemma of defining "income"). Research has also shown that a respondent's perception of a "factual" question may not match the assumptions of the survey designer.

Some of the particular difficulties that affect opinion questions stem from the methodological issues underlying such questions. Academic methodological research in this area often is not directly applicable to the objectives of Federal surveys. Research in psychology and sociology has found varying relationships between particular opinions and particular behaviors, but the explanatory value of such opinion questions is generally low relative to the accepted levels for "factual" information, and is often very low unless the questions have been experimentally selected for their explanatory power.

Academic research into opinion questions has too often been underfunded and of questionable reliability (some experiments use "convenience" samples or other methods with unknown biases). Questions that predict certain behavior with acceptable accuracy may fail to predict apparently similar or related behavior. Opinion questions that have performed well are generally those that have been developed and tested for the specific objectives of the survey. The difficulty of generalizing research results tends to increase the research costs of opinion surveys (e.g., for specific testing of opinion questions). Some agencies have tried to avoid the cost of original research by adapting questions used in other surveys. However, this strategy has not been effective in cases where the prior uses of the questions do not address the cognitive research issues of the proposed survey.

OMB worked with a group of Federal agencies to determine the utility of certain opinion questions to be used in a survey of outdoor recreation. One of the objectives of the recreation survey was to model demand for different forms of recreation and the research issue was to select opinion questions that would be useful predictors of recreation behavior. The sponsoring agency was able to produce research literature that supported the predictive utility of certain types of opinion questions. Thus the sponsor was able to justify the general utility of such questions for their objectives. Other types of opinion questions, which the research literature showed to be unreliable for predictions, were dropped from the survey.

Demonstrating Utility

Three statistical agencies (The Bureau of Labor Statistics, the Census Bureau, and the National Center for Health Statistics) have established programs for cognitive research and related research into respondent behavior. The programs are also supported by generic methodological clearances that permit them to be very responsive to needs for small experiments to test various types of questions. OMB has frequently recommended use of these facilities to other agencies not prepared to do their own research, and in many cases agencies proposing to survey opinions have taken advantage of this option.

Academic research into opinion questions has too often been underfunded and of questionable reliability. OMB has supported the efforts of statistical agencies to build a capability for cognitive and respondent research, and to offer these services to other agencies. Still, in some cases, the lead time and cost of necessary research has deterred agencies from using such methods. OMB has approved use of opinion questions when such uses were justified by appropriate research and agency objectives, but the difficulty (time and cost penalties) of developing reliable opinion questions have limited their wider use.

Some Specific Issues

The reliability concept addresses measurement and estimation errors that are (or are supposed to be) very small in "factual" surveys. Thus high reliability is essential if attitudinal measures are to given any substantial weight relative to "factual" measures.

Often attitudes or opinions that can be easily or reliably measured (or certain well tested and documented scales) are not well-matched to the actual information needs of an agency (utility problem).

Often attitudinal or opinion scales already used in other studies or environments were never tested (prior use does not assure reliability). Even scales determined to be reliable in one environment may be unreliable in another[42].

Some sophisticated scale building techniques (e.g., Racsh models) result in robust "ratio" scales with true "zeroes." While finding questions to estimate the "zero" boundary may be essential to the technique, the questions that define the "zero" point of the relationship are, by definition, unreliable for estimating the construct. Thus these questions have experimental value only and cannot be carried over into surveys designed to support reliable inference.

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[42] See, for example the 1990 paper by T. I. Garner (of BLS) and Klaas deVos (of Erasmus University) contrasting BLS and Dutch experiences with subjective minimum income questions. This paper found significant differences that implied different understanding of the questions in the two populations.

FASQ #10 -- Statistical Issues in Customer Surveys

Customer Surveys encompass a wide range of uses and methodologies. In many cases the simplest methods may be used very effectively to get local customer feedback (i.e., to answer the implicit question -- "How are we doing?"). At the other end of the spectrum, rigorous satisfaction measurement may require carefully developed methods and a sophisticated sample design.

How will the information be used?

A common problem that can undermine customer survey efforts is failing to identify the information requirements the survey must satisfy and/or misunderstanding the relationship of information collection decisions to the utility of the data for the intended purposes. One way of focussing on this problem is to ask -- "Who is the customer for the customer survey?" Figure 1 below lays out some typical options. Once the requirements are understood, there are other problems that must be considered.

Example 1) -- Conflicting objectives.

Simple methods are usually designed to encourage and improve communication with customers. This objective may conflict substantially with any interest in measuring customer satisfaction. Consider, for example, a **simple complaint system** --

> The first objective of a manager initiating a complaint system is to encourage customers to provide feedback. The manager has a stake in legitimizing complaints and encouraging openness from customers. One indication of success in moving toward this goal would be acceptance (and thus increased use) of the complaint system. Once the system is in place, if the customers learn that complaints produce action, the floodgates may open (i.e., complaints and satisfaction are both increasing). Eventually, after changes begin to accumulate, the manager may even hear from the customers who liked it better "the way it was before." Now consider how many managers try to use the shifting count of complaints as a measure of satisfaction?

Example 2) -- Requirement Overload.

Trying to meet many requirements at the same time can compromise all of the objectives. You may see examples of this problem in some of the survey practices of private companies. Private market research generally suffers from very poor response rates. In an effort to get higher response, it has become common practice to use "warranty registration cards," for

WHO IS THE CUSTOMER FOR YOUR CUSTOMER SURVEY?

1) Suppose the information collected is exclusively for the use of front-line manager or employees.

> Such a survey may be nothing more than a simple feedback device, a tool to enhance communications, one of the many ways to "listen to customers." The object of such an exercise is usually to make it easier for customers to communicate their complaints, suggestions or other ideas to those who immediately serve them. Such tools do not *measure* anything, and thus need not be designed to support a measurement process.

2) Back away one step and suppose that the "customer" for the survey needs data collection that supports some sort of comparative measurements.

> Now we are supposing a real measurement process that must be repeatable (measure the same thing at different times and for different groups of respondents) and reasonably complete (does not miss significant bodies of opinion or activity). The "customer" for these kind of results is typically a manager trying to *track the performance* of his own organization or subordinates (who may themselves be managers of other units within the organization). These more stringent requirements demand more *control of the data collection process* (e.g., a rigorously designed and implemented sampling process). If comparison over time is the only need, then there is still flexibility in choosing the measurement method (it only needs to be consistent over time). If comparisons *across* units are needed, then there is another constraint -- comparable measurement methods must be used in all the units to be compared.

3) Back away one more step and suppose that the "customer" is outside the agency bureaucracy.

> This kind of use is implied by the Government Performance and Results Act and by some parts of the Customer Service Executive Order. The "customer" here is generally the Executive Office of the President (e.g., OMB) or top agency management or the Congress, who must have measures that support comparability across Departments or agencies. This case requires all the rigor of the second category above plus the use of measures that are consistent across all the units that are to be compared -- leaving very little room for flexibility sought in the first category.

Figure 6.

example, as a vehicle for gathering market research data. In a few companies, marketing or advertising departments have been allowed to load up customer satisfaction surveys with

marketing research questions. It should also be noted that combining several objectives in a single survey may also make it difficult or impossible to use a generic data collection plan. Most customer satisfaction surveys can be completed in five minutes or less. Longer surveys designed to support more sophisticated research require careful planning and testing for the precise purposes of the survey, characteristics that lend themselves to the normal clearance process and rarely meet the criteria for generic clearance.

> Accurate measurement of customer satisfaction is often a difficult task even with short simple questionnaires. Customer satisfaction questions alone rarely generate respondent resistance, but combining such simple satisfaction questions with questions designed for other purposes may substantially degrade response and should be avoided. For example, adding a market research section to a customer satisfaction survey is a very risky combination. Market research suffers from a number of problems that produce genuine resistance or otherwise undermine response -- questions often lack saliency for the respondent, or get into areas such as income or buying patterns that respondents consider intrusive.

Example 3) Analytical traps.

Simple opinion scales can be a trap for the unwary. With rare exceptions, Likert-style response categories (e.g., from "Highly satisfied" to "highly dissatisfied" in some number of steps) define what is known as an "**ordinal**" scale. The responses imply an order relationship, but have no numerical meaning, that is, the interval between responses is undefined and cannot be mapped into integers. Furthermore the scale has no true ZERO value. This means that numbers assigned to such scales do not the basic axioms of arithmetic that permit numbers to be meaningfully added, subtracted, multiplied or divided. (Scales that have the equal interval property are known as "interval" scales, and those with this property and a true zero are known as "ratio" scales.) Information produced by an ordinal scale can be analyzed be means of frequency distributions. (More complex analyses require sophisticated transformations that are not easily explained to the typical program managers.) Nevertheless, many vendors of data collection and analytical services will calculate meaningless (or, worse yet misleading) home-brewed indices if you as the customer ask for them -- caveat emptor.

Another common trap is the attempt to quantify "gaps" for the technique known as "gap analysis." The object of Gap Analysis is to identify problems ("gaps") in the whole chain of management activities that contribute to poor performance. In most cases, techniques used to identify gaps (e.g., using ordinal scales) cannot meaningfully estimate the size or importance of the gap that they indicate. Effective gap analysis tells you what needs to be fixed, not how to fix it or how much performance will improve.

> Frequently an agency wants to know how satisfied customers are with such attributes as timeliness, courtesy, and knowledge, but also what the customer's expectations are or how important each attribute is to the customer. In this situation, there is often a

temptation to define an ordinal scale for satisfaction and another for importance or expectations, then to use some process involving averaging and subtracting the numbers assigned to the scales to produce some composite "index." Since ordinal scales do not support addition and division (for averages) nor subtraction (for comparative adjustments), the index is likely to exhibit pathological behavior without any warning. There are some reliable alternatives. Expectations can be factored in by using anchored scales (was our performance is better or worse "than expected"), but such scales may produce radically different distributions of responses (footnote to Brown paper). Some empirical results indicate that responses couched in terms of satisfaction may already be referenced to some implicit concept of expectations held by the respondent. This, in turn, suggests using this natural tendency by indicating some explicit reference point (e.g., "service that fully meets your needs"). Importance can be included as a categorical variable (to indicate whether each attribute is more or less important to that customer) and then comparing the distribution of satisfaction responses for each category of customer.

How Requirements Affect Information management

Knowing the uses to be made of customer information can tell you how the data collection process should be managed.

Simple feedback tools (item 1 in Figure 1) require little review by anyone and are prime candidates for the generic clearance process described in FASQ #7. Statistical issues such as sample design or response rates are rarely a factor here.

Data collections that must support measurement within an agency (item 2 in Figure 1) must meet standards set by that agency. These collections may also be included in a generic clearance, but in this case the standardized features (sample designs, standardized questions, etc.) must be incorporated into the generic data collection plan. (Since these standardized features must be established in advance by the agency to be effective, they do not meet the usual criteria for generic tasks -- they should be incorporated in the master plan for scrutiny by agency or OMB reviewers or the public.

Data collections that must support cross agency comparisons (item 3 in Figure 1), cannot be controlled unilaterally by any one of the agencies to be compared. In a sense these are external program evaluations, and thus must be responsive to external evaluators. Such evaluations are not unlike external audits and thus are not suitable for the generic review process described in FASQ #7.

Don't Forget the Obvious

In many cases, unstructured or minimally structured methods of getting feedback work as well or better that formal survey techniques. Regular meetings with users or client groups may provide ideas and discussion you may never hear in a series of structured focus groups. A well-planned meeting or a wide-ranging user conference may provide ideas and discussion you may never hear in the structured format of focus groups. An open-ended solicitation of comments on performance topics in a Federal Register Notice can be very useful. As long as such meetings and FR notices avoid the rigid "question and answer" format, they are generally exempt from PRA review (consult OMB if in doubt). Employee surveys are also generally exempt from PRA review, but this has been a two-edged sword. Many internal surveys fail to take advantage of the statistical expertise available within an agency and thus produce biased or unreliable information.