

action or investigation involving an agency against specific individuals or entities;

(3) By compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

(4) During the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(b) The requirements of this part apply to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in paragraph (a)(3) of this section) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(c) The exception in paragraph (a)(2) of this section applies during the entire course of the investigation or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after a case file or equivalent is opened with respect to a particular party. In accordance with paragraph (b) of this section, collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry, do not fall within this exception.

#### **§ 1320.5 General requirements.**

(a) An agency shall not conduct or sponsor a collection of information unless, in advance of the adoption or revision of the collection of information—

(1) The agency has—

(i) Conducted the review required in § 1320.8;

(ii) Evaluated the public comments received under § 1320.8(d) and § 1320.11;

(iii) Submitted to the Director, in accordance with such procedures and in such form as OMB may specify,

(A) The certification required under § 1320.9;

(B) The proposed collection of information in accordance with § 1320.10, § 1320.11, or § 1320.12, as appropriate;

(C) An explanation for the decision that it would not be appropriate, under § 1320.8(b)(1), for a proposed collection of information to display an expiration date;

(D) An explanation for the decision to provide for any payment or gift to

respondents, other than remuneration of contractors or grantees;

(E) A statement indicating whether (and if so, to what extent) the proposed collection of information involves the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and an explanation for the decision;

(F) A summary of the public comments received under § 1320.8(d), including 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 therefor; and

(G) Copies of pertinent statutory authority, regulations, and such related supporting materials as OMB may request; and

(iv) Published, except as provided in § 1320.13(d), a notice (requesting comments within 30 days) in the **Federal Register**—

(A) Stating that the agency has made such submission; and

(B) Setting forth—

(1) A title for the collection of information;

(2) A summary of the collection of information;

(3) A brief description of the need for the information and proposed use of the information;

(4) A description of the likely respondents and proposed frequency of response to the collection of information;

(5) An estimate of the total annual reporting and recordkeeping burden that shall result from the collection of information, which shall for each collection of information be disaggregated and set forth in terms of the estimated average burden hours per response, the proposed frequency of response, and the estimated number of likely respondents;

(6) Notice that comments may be submitted to the agency and OMB; and

(7) The time period within which the agency is requesting OMB to approve or disapprove the collection of information if, at the time of submittal of a collection of information for OMB review under § 1320.10, § 1320.11 or § 1320.12, the agency plans to request or has requested OMB to conduct its review on an emergency basis under § 1320.13; and

(2) OMB has approved the proposed collection of information, OMB's approval has been inferred under § 1320.10(c), § 1320.11(i), or § 1320.12(e), or OMB's disapproval has been voided by an independent regulatory agency under § 1320.15; and

(3) The agency has obtained from the Director a control number to be

displayed upon the collection of information.

(b) In addition to the requirements in paragraph (a) of this section, an agency shall not conduct or sponsor a collection of information unless:

(1) The collection of information displays a currently valid OMB control number; and

(2)(i) The agency informs 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.

(ii) An agency shall provide the information described in paragraph (b)(2)(i) of this section in a manner that is reasonably calculated to inform the public.

(A) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency includes it either on the form, questionnaire or other collection of information, or in the instructions for such collection.

(B) 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 described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency places the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent;

(C) In the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, the information described in paragraph (b)(2)(i) of this section is "provided in a manner reasonably calculated to inform the public" if the agency publishes such information 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, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information) and/or in the Code of Federal Regulations. For ease of future reference, OMB recommends that, even where an agency has already provided such information and informed the