

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

(m) *Recordkeeping requirement* means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to:

- (1) Retain such records;
- (2) Notify third parties, the Federal government, or the public of the existence of such records;
- (3) Disclose such records to third parties, the Federal government, or the public; or
- (4) Report to third parties, the Federal government, or the public regarding such records.

§ 1320.4 Coverage.

(a) The requirements of this part apply to all agencies as defined in §1320.3(a) and to all collections of information conducted or sponsored by those agencies, as defined in §1320.3 (c) and (d), wherever conducted or sponsored, but, except as provided in paragraph (b) of this section, shall not apply to collections of information:

- (1) During the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;
- (2) During the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit 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 or audits (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, audit, 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 a 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, electronic, mechanical, or other technological collection