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Michael Duane Davis, 2100 Hassell Road, Suite 103, Hoffman Estates, Illinois

**Constructive Notice of Demand  
For  
Direct Challenge to Personal Authority**

Mark Everson  
Commissioner  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20224-0001

Certified Mail # 7004 2510 0000 1814 4230

Denise Bradley  
Department of the Treasury  
Internal Revenue Service  
ACS SUPPORT – STOP 5050  
P.O Box 219236  
Kansas City, MO 64121

Certified Mail # 7004 2510 0000 1814 4223

To Include: Any and All agents and/or employees of the IRS

**PURPOSE:** Constructive Notice of Demand for Verification of authenticity of authority  
**RE:** Letter 250 [Rev 01-2004][LT-16]  
Reg. Mail 7004 2510 0000 1814 1350  
Operations Manager of ACS – Overdue/Seize of wages or property for  
Year: No Year Referenced. This Notice of Demand shall include Any and All  
past, present or Future actions, criminal or civil, by ANY and ALL IRS agents  
and employees.

Dear Mr. Everson and Ms. Bradley:

After considerable review of the Internal Revenue Code, Treasury regulations, published Internal Revenue Service policy, Administrative Procedure Act requirements, Paperwork Reduction Act Requirements, and Supreme Court decisions upholding these requirements, it appears that you are operating outside of venue and subject matter jurisdiction of the Internal Revenue Service. Further, I possess conclusive evidence provided by the IRS Kansas City office, Taxpayer Advocate office and other Governmental agencies confirming the above as the matter applies to me (see Exhibit A).

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Let me start with the Internal Revenue Manual 4.10.7.2.9.8(05-14-99). It states:

1. "Decision made at various levels of the court system are considered to be interpretations of tax laws and may be used by **either examiners or taxpayers** to support a position."
2. "Certain court cases lend more weight to a position than others. A case decided by the **U.S. Supreme Court becomes the law of the land** and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code."

Per **RYDER v. UNITED STATES**, 115 S.Ct. 2031, 132 L.Ed.2d 136, 515 U.S. 177, I am required to initiate a direct challenge to authority of anyone representing himself or herself as a government officer or agent prior to the finality of any proceeding in order to avoid implications of *de facto* officer doctrine. When challenged, those posing as government officers and agents are required to affirmatively prove whatever authority they claim. In the absence of proof, they may be held personally accountable for loss, injury and damages. Further, as per **Constructors, Inc. 713 F.2d.1405 (9<sup>th</sup> Cir. 1983)** states in part, "***When and if IRS agent prove authority. If the IRS officer or agent fails to prove authority when challenged, s/he may be held liable, without immunity, if it later proves that there were in fact, procedural flaws and authority was imposed without the force of law.***"

***"The principal of sovereign immunity is not one which allows the sovereign to continue to inflict injury.... [sovereign immunity] does not give the sovereign the right to totally disregard the effect of its actions upon the public," Shaw v. Salt Lake County, 224 P2d 1037. Sovereign immunity does not apply where (as here) government is a lawbreaker or jurisdiction is the issue, Arthur v. Fry, 300 F.Supp. (1960)***

To claim ignorance of the law is not an excuse to disobey the law as written. It is the responsibility of every person to know what the law says and to stay within the limitations of said law. The courts have upheld this time and time again as these cases will show.

**CONTINENTAL CASUALTY CO. v. UNITED STATES, 113 F2L 284 (5<sup>TH</sup> Cir. 1940):**

"Public officers are merely the agents of the public, whose powers and authority are defined and limited by law. **Any act without the scope of the authority so defined does not bind the principal, and all persons dealing with such agents are charged with knowledge of the extent of their authority.**"

**TRUAX v. CORRIGAN, 275 U.S. 312, 332 (1921)**

"Thus the guarantee was intended to secure equality of protection not only for all but against all similarly situated. Indeed, protection is not protection unless it does so. **Immunity granted to a class however limited, having the effect to deprive another class however limited of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class** as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class."

“It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for everyone’s right to life, liberty, and property, which the Congress or the Legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. ‘All men are equal before the law,’ ‘This is a government of laws and not of men,’ ‘No man is above the law,’ are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws.”

In **FEDERAL CORP INSURANCE v. MERRILL**, 332 U.S. 380, The Supreme court ruled:

“Whatever the form in which the government functions, anyone entering into an arrangement with the government takes a risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of the limitations upon his authority.”

And again in **FRIST v. FROST TRUCKING CO. v. RAILROAD COMM’N OF CALIFORNIA**, 271 U.S. 583 the court ruled:

“It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution.”

**HARMAN v. FORSENIUS**, 380 U.S. 526, 540 (1965) the Supreme Court Ruled:

“...constitutional deprivations may not be justified by some remote administrative benefit to the State. Pp. 542-544.”

This is the only the beginning of the many Supreme Court rulings that the IRS and it’s agents and employees seem to ignore in spite of the IRS’s own manual stating:

“Decisions made at various levels of the court system are considered to be interpretations of the tax laws and may be used by either examiners or taxpayers to support a position.”

“Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.”

In reviewing the Administrative Procedure Act, it has come to my attention that the IRS does not publish all of their regulations in accordance to the Act. For instance, codification of Part 600, except § 600.1(b) have been discontinued. This was published in the Federal Register in October 1948 and reads: (See Exhibit B)

Federal register, 13 Fed. Reg. 7710:

1. The headnote of Subchapter F is amended to read “Records and Procedure.”
2. Codification of Part 600, except § 600.1 (b), is discontinued. Future amendments to the statement of organization of the Bureau of Internal Revenue will appear in the Notices section of the FEDERAL REGISTER.

If you will consult § [5,1] 11.9 of the Internal Revenue Manual, you will find the IRS personnel do not have delegated authority to execute Form 1040(individual), 1041 (trust) & 1120 (corporation/business) substitute returns under provisions of 26 U.S.C. § 6020(b). It follows that if IRS personnel do not have delegated authority to unilaterally execute these returns, Form 1040, 1041 and 1120 returns are not mandatory.

The Administrative Procedures Act (An act of Congress) mandates that all regulations and FORMS that require a Citizen to comply with, MUST be published in the Federal Register. The only Form 1040 that I have been able to find published in the Federal Register, under published rules and regulations § 6091, is Form 1040 Non Resident Alien.

I respectfully request the IRS Agents at this hearing to look at the application for OMB Submission Forms that applies to the two 1040 forms that are in question. (See Exhibit C, OMB submission for 1040 NR and Exhibit D, OMB submission for 1040 Individual) Also, kindly review Treasury Decision 8011 (50FEB.REG.10222, 1985-1 C.B. 397), 26 C.F.R. Part 602 as it pertains to USC § 6091 and IRS Compliance/The Paperwork Reduction Act.

First Lets begin by clarifying the general rule in the interpretation of all statutes. As Justice Story said, "it is \* \* \* a general rule in the interpretation of all statutes, levying taxes or duties upon subjects or citizens, not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters, not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import." [FN 1] For further authority regarding this rule of statutory construction, please see the following cases: Gould v. Gould, 245 U.S. 151 (1917); Crocker v. Malley, 249 U.S. 223 (1919); United States v. Field, 255 U.S. 257 (1921); Smietanka v. First Trust & Sav. Bank, 257 U.S. 302 (1922); United States v. Merriam, 263 U.S. 179 (1923); Bowers v. New York & Albany Lighterage Co., 273 U.S. 346 (1927); Reinecke v. Northern Trust Co., 278 U.S. 339 (1929); Miller v. Standard Nat. Margarine Co. of Florida, 284 U.S. 498 (1932); Old Colony R. Co. v. Commissioner, 284 U.S. 552 (1932); and White v. Aronson, 302 U.S. 16 (1937). [FN 2] American citizens clearly have the benefit of this rule.

The requirement to file a federal income tax return is the subject of 26 U.S.C. § 6091, which provides in pertinent part as follows:

"a) General rule "When not otherwise provided for by this title, the Secretary shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

"(b) Tax returns" In the case of returns of tax required under authority of part II of this subchapter—

(1) Persons other than corporations (A) General rule Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary— (i) in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or (ii) at a service center serving the internal revenue district referred to in clause (i),"as the Secretary may by regulations designate."

Examination of this statute reveals that it depends for its implementation upon the promulgation of regulations, and the relevant cases have so held. See *United States v. Citron*, 221 F.Supp. 454, 456 (S.D.N.Y. 1963); *United States v. Gorman*, 393 F.2d 209, 213-214 (7th Cir. 1968); *United States v. Ramantanin*, 452 F.2d 670, 671 (4th Cir. 1971); *United States v. Gilkey*, 362 F.Supp. 1069, 1071 (E.D.Pa. 1973); *United States v. Lawhon*, 499 F.2d 352, 355 (5th Cir. 1974); *United States v. Calhoun*, 566 F.2d 969, 973 (5th Cir. 1978); *United States v. Clinton*, 574 F.2d 464, 465 (9th Cir. 1978); *United States v. Quimby*, 636 F.2d 86, 90 (5th Cir. 1981); *United States v. Rice*, 659 F.2d 524, 526 (5th Cir. 1981); *United States v. Grabinski*, 727 F.2d 681, 684 (8th Cir. 1984); *United States v. Garman*, 748 F.2d 218, 219 (4th Cir. 1984); *United States v. Griffin*, 814 F.2d 806, 810 (1st Cir. 1987); and *United States v. Dawes*, 874 F.2d 746, 750 (10th Cir. 1989).

The regulations implementing this section of the current 1986 Internal Revenue Code (sometimes "IRC") are shown in Exhibit E. In reviewing these regulations and considering the above principle of statutory construction, it appears that citizens are mentioned only in 26 C.F.R. § 1.6091-3. In fact, it is only § 1.6091-3 which specifically identifies any parties required to file federal income tax returns [FN 3] and they are as follows:

"(a) Income tax returns of which all, or a portion, of the tax is to be paid in foreign currency. See Secs. 301.6316-1 to 301.6316-6 inclusive, and Secs. 301.6316-8 and 301.6316-9 of this chapter (Regulations on Procedure and Administration).

"(b) Income tax returns of an individual citizen of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States. A taxpayer's principal place of abode will be considered to be outside the United States if his legal residence is outside the United States or if his return bears a foreign address.

"(c) Income tax returns of an individual citizen of a possession of the United States (whether or not a citizen of the United States) who has no legal residence or principal place of business in any internal revenue district in the United States.

"(d) Except in the case of any departing alien return under section 6851 and Sec. 1.6851-2, the income tax return of any nonresident alien (other than one treated as a resident under section 6013 (g) or (h)).

"(e) The income tax return of an estate or trust the fiduciary of which is outside the United States and has no legal residence or principal place of business in any internal revenue district in the United States.

"(f) Income tax returns of foreign corporations.

"(g) The return by a withholding agent of the income tax required to be withheld at source under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, as provided in Sec. 1.1461-2.

"(h) Income tax returns of persons who claim the benefits of section 911 (relating to earned income from sources without the United States).

"(i) Income tax returns of corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations) except in the case of consolidated returns filed pursuant to the regulations under section 1502.

"(j) Income tax returns of persons who claim the benefits of section 931 (relating to income from sources within possessions of the United States).

"(k) Income tax returns of persons who claim the benefits of section 933 (relating to income from sources within Puerto Rico).

"(l) Income tax returns of corporations which claim the benefits of section 941 (relating to the special deduction for China Trade Act corporations)."

The regulations which implement § 6091 specifically mention American citizens abroad, but do not mention in any way an American citizen "at home." The only citizens required via 26 C.F.R. § 1.6091-3 to file federal income tax returns are citizens outside the United States.

Further, the absence of any mention of citizens "at home" in § 1.6091-3 also appears to be a feature of the Internal Revenue Code as well. The major provisions of the federal income tax are contained in subtitles A and C of the IRC. In this file, please find references to every section of subtitles A and C appearing in the 1998 edition of the 1986 Internal Revenue Code that mentions "citizen" as well as short excerpts of each section. Remarkably, there are no sections of the Internal Revenue Code that even mention a "citizen at home." [FN 4]

**In 1980, Congress adopted the Paperwork Reduction Act ("P.R.A."), which was substantially amended in 1995; see this brief (Exhibit F) which explains the origins of this act, its meaning and application. In summary, this law mandates that all collections of information by federal agencies (agency forms as well as regulations that require the submission of information to the various agencies) were subject to the P.R.A. clearance and approval process controlled by the Office of Management and Budget ("OMB"). Via this act, an agency cannot collect information unless the various forms and similar agency regulations used to collect information display an OMB control number. Because of the Public Protection Clause of the P.R.A., agencies have an incentive to make sure that all forms and related regulations bear and display OMB control numbers. (For regulations implementing the P.R.A., see 5 C.F.R. Part 1320 as Exhibit G).**

**As noted at the start of this letter, the requirement to file federal tax returns is governed by 26 U.S.C. § 6091 (Exhibit H – Index and Findings Aids to Code of Federal Regulations). ( But, that section of the Code completely depends upon regulations for its implementation. Consequently in reference to the federal income tax, that section of the Code is implemented via 26 C.F.R. §§1.6091-1, 1.6091-2, 1.6091-3 and 1.6091-4 (Exhibit E). For the estate tax, § 6091 is implemented by 26 C.F.R. §§ 20.6091-1 and 20.6091-2. For the gift tax, this section is implemented via 26 C.F.R. §§ 25.6091-1 and 25.6091-2. The filing of employment tax returns is governed by 26 C.F.R. § 31.6091-1. See also 26 C.F.R. §§ 40.6091-1, 41.6091-1, 44.6091-1, 53.6091-1, 53.6091-2, 55.6091-1, 55.6091-2, 156.6091-1, 156.6091-2, and 301.6091-1. Obviously, these various regulations which appear to require the filing of tax returns are clearly subject to the P.R.A.**

**When the P.R.A. went into effect, the IRS did secure OMB control numbers for most if not all of its tax forms. But on March 31, 1983, the OMB issued regulations for the P.R.A. which required federal agencies to also obtain OMB approval for agency regulations that collected information; see 48 Fed. Reg. 13666. By March, 1985, the IRS obtained approval for its regulations that collected information. Via Treasury Decision 8011 (Exhibit I) (50 Fed. Reg.**

10222, 1985-1 C.B. 397), 26 C.F.R. Part 602 was adopted and it presented via a tabular list the various control numbers which had been assigned to the federal income tax regulations that were collections of information.

Review of the assignment of OMB control numbers displayed in this Part 602 is very revealing. For example, 26 C.F.R. § 20.6091-1 (estate tax) was assigned control number "1545-0015," which is the number for estate tax Form 706 (Exhibit J). Number 1545-0020 was assigned to 26 C.F.R. §§ 25.6091-1 and 25.6091-2 (gift tax); this is the number for gift tax Form 709 (Exhibit L). Number 1545-0028 was assigned to 26 C.F.R. §§ 31.6091-1 (employment tax), which is the number for employment tax Form 940 (Exhibit L), and number 1545-0029 was assigned to 26 C.F.R. §§ 31.6091-1(a), which is the number for employment tax Form 941V (Exhibit M). See also Form 941PR, Form 941PRB, Form 941SB, and Form 941SS (Exhibits N, O, P and Q respectively). Number 1545-0143 was assigned to 26 C.F.R. §§ 41.6091-1, which is the number on Form 2290 (Exhibit R), and number 1545-0235 was assigned to 26 C.F.R. §§ 44.6091-1, which is the number appearing on wagering tax Form 730 (Exhibit S). Clearly, the IRS knows that any regulations implementing § 6091 require the assignment of control numbers.

What about the assignment of control numbers for the income tax regulations which implement § 6091? Again review of Treasury Decision 8011 shows that the IRS is aware that such regulations must have control numbers because at least one of these regulations does have a number. Only 26 C.F.R. § 1.6091-3 ("International") displays a control number, which is 1545-0089; this is the same number for Form 1040 NR (Exhibit T). Interestingly, for a number of years 26 C.F.R. § 1.1-1 (relating to the "tax imposed" section of the Code) was assigned control number 1545-0067, which is the number on Form 2555 (Exhibit U), entitled "Foreign Earned Income."

It cannot be claimed that the assignment of a control number to only § 1.6091-3 was a mistake committed in the early days of compliance with the P.R.A. On March 4, 1991, amended Treasury Decision 8011 was published at 56 Fed. Reg. 8912, 1991-1 C.B. 266 (Exhibit W), and the same assignments of control numbers as appeared in the 1985 Treasury Decision 8011 were again published here. This Treasury Decision is published in the C.F.R. as 26 C.F.R. Part 602, and it has remained essentially the same since 1985, with minor revisions not important here; see 1987 Part 602, 1988 Part 602, 1989 Part 602, 1990 Part 602, 1991 Part 602, 1992 Part 602, 1993 Part 602, 1994 Part 602, 1995 Part 602, 1996 Part 602, 1997 Part 602, 1998 Part 602, 1999 Part 602, 2000 Part 602, 2001 Part 602, 2002 Part 602, and 2003 Part 602.

The process for obtaining OMB control numbers by federal agencies is fairly simple. An agency desiring to obtain a control number for a collection of information submits Form 83-1 (Exhibit V) (also known in the past as Standard Form 83). The instructions for this form require each agency to submit with the form a "supporting statement" which is to "identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information." The supporting statement must also include information regarding the "burden" imposed upon the public as a result of the "collection of information."

The Forms 83-1 submitted to OMB by IRS to obtain a control number for Form 706 and its corresponding regulations provide an excellent example of how control numbers are assigned to both forms and applicable regulations for those forms. On August 9, 1995, IRS employee Lois

Supporting Statement, the continued assignment of OMB control number 1545-0015 to 26 C.F.R. § 20-6091-1 was sought. See also Forms 83-1 for Form 706 submitted in 1998 and 2001 (both Exhibit J). On September 15, 1995, IRS employee Dale Morgan sought an OMB number for Form 709 (Exhibit J). As a result, number 1545-0020 was assigned to 26 C.F.R. §§ 25.6091-1 and 25.6091-2. See also similar forms submitted in 1998 and 2001 (Exhibit J).

On November 26, 1996, IRS employee Martha Brinson submitted a Form 83-1 to the OMB to obtain control number 1545-0235 for wagering tax Form 730 (Exhibit S). Item 12 of that application concerned the estimated burden of the collection of this information. It stated as follows: "The following regulations impose no additional burden. Please continue to assign OMB No. 1545-0235 to these regulations: \* \* \* 44.6091-1 \* \* \* We have reviewed the above regulations and have determined that the reporting requirements contained in them are entirely reflected on the form. The justification appearing in item 1 of the supporting statement applies both to the regulations and to the form." The similar Forms 83-1 for 1999 and 2002 (both in Appendix I) contained identical language.

On November 21, 1994, IRS employee Lois Holland submitted a Form 83-1 regarding IRS Form 940 (Exhibit L). In the attached Supporting Statement, item 13 ("Estimated Burden of Information Collection") set forth estimates of the burden resulting from collecting the information required by Form 940. This same part of the Supporting Statement stated: "The following regulations impose no additional burden. Please continue to assign OMB number 1545-0028 to these regulations: \* \* \* 31.5091-1 \* \* \*." Please also see Form 83-1 for Form 940 submitted in 1997 and 2003 (Exhibit L).

The Forms 83-1 submitted to obtain control numbers for IRS Form 1040 NR also provide excellent examples of the method of assigning control numbers for not only the form itself, but also any applicable and relevant regulations. On September 2, 1994, Ms. Holland submitted to OMB a Form 83-1 for this Form 1040 NR (Exhibit T). In the Supporting Statement for this form, the following request to continue to assign the same control number for Form 1040 NR to certain identified tax regulations was made: "Please continue to assign OMB number 1545-0089 to these previously approved regulations. \* \* \* 1.6091-3." See also Forms 83-1 for Form 1040 NR submitted in 1987, 1997, 2000 and 2003 (All Exhibit T).

It is therefore clear that the IRS is obtaining control numbers for most tax regulations simply by asking for that assignment of control numbers via the Supporting Statement attached to Form 83-1. This appears clear from the Federal Register publication of all notices seeking OMB control numbers for the year 2002. Certainly vast numbers of tax regulations are not assigned control numbers by means of the submission of Forms 83-1 to acquire these numbers independently; most numbers for tax regulations are assigned solely because of their association with a specific tax form.

The Forms 83-1 regarding Form 2555 also demonstrate this consistent method of obtaining control numbers for regulations simply via the Supporting Statement. On August 6, 1992, Lois Holland submitted Form 83-1 to obtain a control number for Form 2555 (Exhibit U). As above, the Supporting Statement in item 13 set forth several specific regulations and requested that OMB "continue to assign OMB number 1545-0067 to these previously approved regulations."



See also similar forms submitted in 1993, 1996, and 1999 (all in Exhibit U). Please notice that this form is not a mandatory form, and hence it did not seek the assignment of a control number to any regulations under IRC § 6091.

What about the Forms 83-1 for Form 1040? What do these forms reveal? On September 16, 1998, a Form 83-1 seeking OMB control number 1545-0074 for Form 1040 (Exhibit D) was submitted to OMB. As shown by the applicable pages of the Supporting Statement, a list of relevant tax regulations appeared therein, and item 12 ("Burden Estimation") sought the continued assignment of control number 1545-0074 to these regulations: "We are asking for continued approval of these regulations that are associated with Form 1040. Please continue to assign OMB number 1545-0074 to these regulations:". Thereafter follows a 3 page list of applicable regulations, but none was a regulation based upon IRC § 6091. See also July 18, 1985, Form SF 83 seeking OMB control number 1545-0074 for Form 1040 (Exhibit D); June 23, 1986, Form SF 83 (Exhibit D) seeking the same number; and September 27, 1996 Form SF 83 (Exhibit D). It is astounding that no IRC § 6091 regulations "are associated with Form 1040."

But based upon the statutory and regulatory history of the federal income tax, these otherwise odd features which manifest themselves in the operation of the P.R.A. are entirely appropriate. While the 1913 income tax act appears to have subjected everyone to withholding, via §§ 1205 and 1208 of the 1917 Act (Exhibit X), 40 Stat. at 335, withholding was limited to non-resident aliens and foreign firms. Also, Treasury Decision 2313 (Exhibit Y) announced that Form 1040 was to be filed by non-residents or their agents. Considering these facts (and others), it seems quite logical that Form 1040 NR would be the mandatory return to file.

The question is, "Does the Internal Revenue Agency have the authority to compel me to file a piece of paper that has no force and effect of law?"

So again, we must turn to the courts and see what rulings have been made on this issue.

**UNITED STATES v. TWO HUNDRED THOUSAND DOLLARS (\$200,000) IN UNITED STATES CURRENCY, 590 f. Supp. 866 (S. D. Fla. 1984)**

"However, the regulations are incomplete in this case without the forms, because the regulations do not set forth the information a traveler will be required to furnish on the forms, specifically form 4790," Id. At 869.

The Court found that the form itself constituted an agency "rule" and not "law".

"Interpretative rules are 'statements as to what the administrative officer thinks the statute or regulation means', ... whereas substantive rules, such as Form 4790, are issued by an agency pursuant to statutory authority which have the force and effect of law ... It is also apparent that Form 4790 is not a 'general statement of policy' as would be exempted from the publication requirement under 5 U.S.C. section 553(b). The Form 4790 is a 'legislative' rule rather than an interpretive one or a general statement of policy is apparent from the fact that the form was clearly intended to implement the pertinent statute ... and the regulation ...; section 551(4) of the APA (Administrative Procedure Act) distinguishes agency statements designed to implement a law from these designed to interpret it," Id., at 870, 871.

“Given the scope of the information which customs Form 4790 requires a traveler to furnish, as well as the Form’s role as an implementing mechanism for the reporting regulations, Form 4790 is a substantive and implementing rule which falls within none of the acceptable exemptions under the APA and should have been published in the Federal Register,” Id., at 871, 872.

You will find this ruling consistent with **GONZALEZ v. FREEMAN, 334 F.2D 570 (D.C. Cir 1964)** where the court ruled:

“The command of the Administrative Procedure Act is not a mere formality. Those who are called upon by the government for a countless variety of goods and services are entitled to have notice of the standards and procedures which regulate these relationships. Neither appellants nor others similarly situated can turn to any official source for guidance as to what acts will precipitate a complaint of misconduct, how charges will be made, met or refuted, and what consequences will flow from misconduct if found,” Id., at 578.

“Considerations of basic fairness require administrative regulations establishing standards for debarment and procedures which will include notice of specific charges, opportunity to present evidence and to cross-examine adverse witness, all culminating in administrative findings and conclusions based on the record so made,” Id., at 578.

“[W]e cannot agree that Congress intended to authorize such consequences without regulations establishing standards and procedures and without notice of charges, hearings, and findings pursuant hereto. Absent such procedural regulations and absent notice, hearing and findings in this case, the debarment is invalid,” Id., at 579.

Again in **HOTCH v. UNITED STATES, 212 F.2D 280, 283 (9<sup>TH</sup> Cir 1954)**, the court again ruled:

“The acts set up the procedure which must be followed in order for agency rulings to be given the force of law. Unless the prescribed procedures are complied with, the agency (or administrative) rule has not been legally issued, and consequently is ineffective.”

As well as in **BERENDS v. BUTZ, 357 f.Supp. 144 (D. Minn. 1973)**

“In adopting the directive of December 27, 1972, defendants did not comply with even one of these mandatory requirements, despite the fact that the directive would have a substantial impact on those regulated, and hence is a ‘rule’ as contemplated in the statute,” Id., at 154.

“Inherent in these provisions is the concept that the public is entitled to be informed as to the procedures and practices of a government agency, so as to be able to govern their actions accordingly. The termination of the emergency loan program was without any notice, and was in violation of the statute,” Id., at 155.

And yet again in **CHEEK v. UNITED STATES, 498 U.S. 192 (1991)** the Supreme Court established that, inter alia, persons could be held accountable and liable in accordance to the long established practice of the common law. “...that when it came to tax law, because of the

**complexity of tax law, that the rights of such persons were different, were not the same as with the common law, but were greater as to the right to know and understand the tax laws on a more thorough basis.”**

The Internal Revenue Service, successor of the bureau of Internal Revenue, was not created by Congress, as required by Article I § 8, clause 18 of the Constitution of the United States; so cannot legitimately enforce internal revenue laws of the United States in States of the Union. (See Statement of IRS organization at 39 Fed. Reg. 11572, 1974-1 Cum. Bul. 440, 37 Fed. Reg. 20960, and the Internal Revenue Manual 1100 through the 1997 edition)

Article I § 8, clause 18 vests Congress with complete responsibility for facilitating power of Government of the United States via legislation: [The Congress shall have Power] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof.”

In the historical statement, the Commissioner of Internal Revenue admitted that Congress did not create a Bureau of Internal Revenue via the 1862 act in which the office of Commissioner of Internal Revenue was created, but alleged that Congress intended to create a bureau. In reality, the 1862 legislation created the offices of “assessor” and “collector”, in addition to the office of Commissioner of Internal Revenue. Assessors and collectors were appointed for each revenue district somewhat as U.S. Attorneys are appointed today. Those appointed to these offices continued to collect internal revenue within States of the Union until the Internal Revenue Code of 1954 was implemented. The two offices were administratively abolished via Reorganization Plan No. 26 of 1950. The name of the Bureau of Internal Revenue was changed to Internal Revenue Service via Treasury Order #150-27, which was not published in the Federal Register in compliance with requirements of the Federal Register Act (See 44 U.S.C. §§ 1501 et seq., particularly § 1505(a).

**UNITED STATES v. GERMAINE**, 99 U.S. 508 (1879); **NORTON v. SHELBY COUNTY**, 118 U.S. 425, 441, 6 S. Ct. 1131 (1886), and numerous other cases that reinforce the determination “there can be no officer, either *de jure* or *de facto*, if there be no office to fill.”

The Internal Revenue Service operates in an ancillary or other secondary capacity under contract, memorandum of agreement or some comparable device to provide services under original authority delegated to the Treasury financial Management Service or some other bureau of the Department of the Treasury; the contracted or otherwise authorized services extend only to government employees and employers, as defined at 26 U.S.C. §§ 3401© & (d). The authorization is essentially intragovernmental in nature; it does not extend to private sector enterprise in States of the Union.

The pocket Commission Handbook, located in Chapter 3 of Internal Revenue Manual § 1.16.3 Authorized Pocket Commission Holders, lists IRS personnel who are authorized to have pocket commissions. By cross-referencing to the delegation of authority to issue summonses, it appears that all IRS personnel authorized to issue summonses are under the assistant Commissioner (International). If the authorities are accurate, your proposed examination would constitute a sham proceeding under color of authority of the United States. To the best of my knowledge, I have never received income from sources and activities subject to jurisdiction of the Assistant Commissioner (International).

Further, if you will consult Part 14 of the Internal Revenue Manual, "International", at § 114.1, "Compliance and Customer Service Managers Handbook", you will find that examination, collection, criminal investigation and customer service functions are all categorized under the Assistant Commissioner (International). There is no corresponding categorization that might qualify as "domestic" operations.

If you will consult 26 CFR § 601.101, you will find that IRS personnel have jurisdiction for examination and collection only within internal revenue districts; all other functions fall under jurisdiction of the foreign district director, now the Assistant Commissioner (International). The Secretary of the Treasury has never established internal revenue districts in States of the Union, as required by 26 U.S.C. § 7621 AND executive Order #10289. Therefore, you must be operating under presumption of Assistant Commissioner (International) jurisdiction.

Federal income tax returns are allegedly required to be filed at IRS service centers. But the Administrative Procedures Act demands that any part of an agency's field structure which affects the domestic American public must be published in the Federal Register. The absence of publication in the Federal Register of these extremely important parts of the IRS field structure further indicates that the service centers do not legally affect the domestic American public and can, therefore, be ignored by the ordinary American wage earner living and working at home. However, the IRS claims that the 16<sup>th</sup> Amendment places a liability on my labor but continues to ignore the fact that I am not or have ever been a corporation, resident Alien, or working abroad. The courts settled the issue of the 16<sup>th</sup> Amendment as the cases below will show but again, the IRS refuses to follow it's own rules and abide by the courts rulings.

**Internal Revenue Manual 4.10.7.2.9.8 (05-14-99).**

"Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by **either examiners or taxpayers** to support a position.

"Certain court cases lend more weight to a position than others. A case decided by the **U.S. Supreme Court becomes the law of the land** and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code."

**BRUSHABER V. UNION PACIFIC R. CO., 240 US 1.11 (1916):**

"... the confusion is not inherent, but rather arises from the conclusion that the 16<sup>th</sup> Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far reaching effects of this **erroneous** assumption will be made clear by generalizing the many contentions advanced in argument to support it ..."

**STANTON V. BALTIC MINING CO., 240 US 103, 112 (1916):**

"... it is manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16<sup>th</sup> Amendment conferred no new power of taxation..."

**BOWERS V. KERBAUGH-EMPIRE CO., 271 U.S. 170, 174 (1926):**

“The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, ‘from whatever source derived’ without apportionment among the several states, and without regard to any census or enumeration. **It was not the purpose or effect of the amendment to bring any new subject within the taxing power.**”

**PECK V. LOWE, 247 U.S. 165, 173 (1918):**

“The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects, ...”

**DOYLE V. MITCHELL BROS., 247 U.S. 179, 183 (1918):**

“An examination of these and other provisions of the Act (The 16<sup>th</sup> Amendment) **make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations.**”

**EISNER V. MACOMBER, 252 U.S. 189, 205, 206 (1920):**

“The 16<sup>th</sup> Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted.”

**“As repeatedly held, this did not extend the taxing power to new subjects...”**

**EVANS V. GORE, 253 U.S. 245, 259 (1920):**

“Does the Sixteenth Amendment authorize and support this tax and the attendant diminution; that is to say, does it bring within the taxing powers subjects theretofore excepted? The court below answered in the negative; and the counsel for the government say: ‘It is not, in view of recent decisions, contended that this amendment rendered anything taxable as income that was not so taxable before.’”

Just as the issue of wages was settled in countless Supreme Court decisions, the IRS chooses to look the other way. What the Supreme Court established in **EVANS v. GORE** was that not only did the 16<sup>th</sup> Amendment **NOT** confer new taxing powers to Congress to tax the American Citizen living and working within the United States of America, but it also acknowledged the definition of **INCOME** as defined by the Supreme Court in **FLINT v. STONE TRACY CO.**

**FLINT v. STONE TRACY CO., 220 U.S. 107, 144 (1911):**

“A reading of this portion of the statute (1909 corporation tax act) shows the purpose and design of Congress in its enactment and the subject-matter of its operation. **It is at once apparent that its terms embrace corporations and joint stock companies or associations which are organized for profit, and have a capital stock represented by shares.** Such joint stock companies, while differing somewhat from corporations, have many of their attributes and enjoy many of their privileges.”

**MERCHANTS’ LOAN & TRUST CO., v. SMJETANKA, 255 U.S. 509, 519 (1921):**

“There would seem to be no room to doubt that **the word ‘income’ must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act,** and what that meaning is has now become definitely settled by decisions of this Court.”

**BOWERS v. KERBAUGH-EMPIRE, 271 U.S. 170 (1926):**

“Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the 16<sup>th</sup> Amendment, and in the various revenue acts subsequently passed.”

**HELVERING v. EDISON BROTHERS' STORES, 8 Cir. 133 F.2d 575 (1943):**

“The Treasury cannot by interpretive regulation make income of that which is not income within the meaning of the revenue acts of Congress, nor can Congress, without apportionment, tax that which is not income within the meaning of the 16<sup>th</sup> Amendment.”

**SOUTHERN PACIFIC CO. v. LOWE, 247 U.S. 330, 335 (1918):**

“We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909, the broad contention submitted on behalf of the government that all receipts, everything that comes in, are income with the proper definition of the term ‘gross income’.  
**Certainly the term ‘income’ has no broader meaning in the Income Tax Act of 1913 than in that of 1909, and for the present purpose we assume there is no difference in its meaning as used in the two acts.**”

**BUTCHER'S UNION CO. v. CRESENT CITY CO., 111 U.S. 746, 757 (1814):**

“The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same applied to all persons of the same age, sex and condition, is a distinguishing privilege claim as their birthright. It has been well said that the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him.”

There are essentials to any case or controversy, whether administrative or judicial, arising under the Constitution and laws of the United States (Article III § 2, U.S. Constitution, “arising under” clause). See **Federal Maritime Commission v. South Carolina Ports Authority, 535 U.S. (2002).**

The following elements are essential:

1. When Challenged, **standing**, venue and all elements of subject matter jurisdiction, including compliance with substantive and procedural due process requirements, must be established in record.
2. Facts of the case must be established in record.
3. Unless stipulated by agreement facts must be verified by competent witnesses via testimony (affidavit, deposition or direct oral examination).
4. The LAW of the case must affirmatively appear in record, which in the instance of a tax controversy necessarily includes taxing and liability **statutes** with attending **regulations** (See **United States of America v. Menk, 260 F. Supp. 784 at 787** and **United States of America v. Community TV, Inc., 327 F.2d 79 (10<sup>th</sup> Cir., 1964):.**

5. The advocate of a position must prove application of law to stipulated or otherwise provable facts.
6. The trial court, whether administrative or judicial, must render a written decision that includes findings of fact and conclusions of law.

As you have not complied with these elements, I am duty bound to ask that you now prove your Personal Authority as an authorized government agent.

In **Federal Maritime Commission v. South Carolina Ports Authority, 535 U.S. (March 28, 2002)** the court ruled:

“There can be little doubt that the role of the modern federal hearing examiner or administrative law judge... is ‘functionally comparable’ to that of a judge. His powers are often, if not generally, comparable to those of a trial judge: He may issue subpoenas, rule on proffers of evidence, regulate the course of the hearing, and make or recommend decisions. More importantly, the process of agency adjudication is currently structured as so to assure that the hearing **examiner exercise his independent judgment on the evidence before him, free from pressures by the parties or other officials within the agency.**” Id., at 513 (citation omitted).

”[F]ederal administrative law requires that agency adjudication contain many of the same safeguards as available in the judicial process. The proceedings are adversary in nature. They are conducted before **a trier of fact insulated from political influence.** A party is entitled to present his case by oral or documentary evidence, and the transcript of testimony and exhibits together with the pleadings constitutes the exclusive record for decision. The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record.” Ibid. (citations omitted).

A case is commenced by the filing of a complaint. See 46 /crf § 502.61 (2001); Fed. Rule Civ. Proc.3. The defendant then must file an answer, generally within 20 days of the date of service of the complaint, see § 502.64(a); Rule 12(a)(1), and may also file a motion to dismiss, see § 502.227(b)(1); Rule 12(b). A defendant is also allowed to file counterclaims against the plaintiff, see § 502.64(d); Rule 13. If a defendant fails to respond to a complaint, default judgment may be entered on behalf of the plaintiff, see § 502.64(b); Rule 55. Intervention is also allowed, see § 502.72, Rule 24. Submitting requests for admissions, § 502.207; Rule 36.

**“The Federal rules of Civil procedure will be followed to extent that they are consistent with sound administrative practice.”<sup>10</sup> § 502.12.**

In USA TODAY, February 1, 2005, Today’s debate: Judicial ethics, page 12 A:

**“The goal of judicial impartiality and the appearance of impartiality is best achieved by careful scrutiny by honest and conscientious judges applying ethical principles in a commonsense manner.”** by Gordon J. Quist (*Gordon J. Quist is a U.S. district judge in Grand Rapids, Mich., and chairman of the federal judiciary’s committee on Codes of Conduct.*)

**TAKE JUDICIAL NOTICE THAT:**

**“...Jurisdiction of the Courts of the United States means a law providing in terms of revenue; that is to say, a law which is directly traceable to the power granted to Congress by § 8, Article I, of the Constitution, ‘to lay and collect taxes, duties, imports, and excises.’” US v. Hill, 123 US 681,686 (1887).**

**“Decision is void on the face of the judgment roll when from four corners of that roll, it may be determined that at least one of three elements of jurisdiction was absent: (1) jurisdiction over parties, (2) jurisdiction over subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered.” B&C Investments, Inc. v. F&M National Bank & Trust, 903 F12d 339 (Okla. App. Div. 3, 1995).**

**“Jurisdiction is essentially the authority conferred by Congress to decide a given type of case one way or the other. The Fair v. Hohler Die Co., 228 U.S. 22, 25 (1913). Here 1343 (3) and 1983 unquestionably authorized federal courts to entertain suits to redress the deprivation, under color of state law, of constitutional rights. It is also plain that the complaint formally alleged such a deprivation.” Hagen v. Lavinem 415 US 528, 39 L.ed. 577, 94 S Ct, 1372 (N.Y. March 28, 1974).**

**“Sec. 2255. Federal custody; remedies on motion attacking sentence.**

**A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence. Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or there has been such denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or re-sentence him or grant a new trial or correct the sentence as may appear appropriate.”**

**“If this requirement...is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by the court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus.” Johnson v. Zerbst, 304 US 458, 468 (1938).**

**“Void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed.” Lufkin v. McVicker, 510 S.W. 2d 141 (Tex. Civ. App. – Beaumont 1973).**



**“The question of Jurisdiction in the court either over the person, the subject matter or the place where the crime was committed can be raised at any stage of a criminal proceedings; it is never presumed but must be proved; and it is never waived by the defendant.” United States v. Roger, 23 F. 658 (W.D. Ard. 1885).**

**“A ‘void’ judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack. No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicate, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been.” 10/13/58 FRITTS v. KRUGH SUPREME COURT OF MICHIGAN, 92 n.w.2D 604, 354 Mich. 97.**

**“Void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by FRAUD, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before the court.” People ex rel. Brzica v. Village of Lake Barrington, 644 N.E.2d 66 (Ill. App 2 Dist. 1994).**

**“Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside.”, Jaffe and Asher v. Van Brunt, S.D.N.Y. 1994 F.R.D.278.**

I have only stood on my right to demand legal authority from the IRS as granted by Congress to compel me to file a 1040 Individual Return. IRS will be in default if it fails to answer.

**Please provide me with certified copies of the following:**

1. Your precise title (“revenue officer”, “revenue agent”, “appeals officer”, “special agent”, etc.) and cite the section of the act of Congress that created the office you occupy;
2. Your constitutional oath of office, as required by Article VI, Paragraph 3 of the Constitution of the United States and 5 U.S.C. § 3331;
3. Your civil commission as agent or officer of Government of the United States, as required by Article II § 3 of the Constitution of the United states and attending legislation;
4. Your affidavit declaring that you did not pay for or otherwise make or promise consideration to secure the office (5 U.S.C. § 3332);
5. Your personal surety bond; and
6. Documentation the establishes your complete line of delegated authority, including all intermediaries such as the Assistant Commissioner (International), beginning the with President of the United States.

# UNOFFICIAL COPY

Michael Duane Davis, 2100 Hassell Road, Suite 103, Hoffman Estates, Illinois

These documents should all be filed as public records. See 5 U.S.C. § 2906 for requirements concerning filing oaths of office. In the event you do not have a personal surety bond, you may provide a copy of your financial statement, which you are required to file annually. Your financial statement will be construed as a private treaty surety bond in the event that you exceed lawful authority.

Collateral issues other than the above requests intended to document your personal standing will be addressed separately from this request.

You may provide the requested items within a reasonable period of **twenty (20) calendar days** from receipt of this request. See the Administrative Procedures act for deadlines. In the event **you do not** formally answer this demand, you may be considered a party to any past or subsequent adverse action. You may withdraw, **in writing**, any and all claims, demands and/or encumbrances issued directly or indirectly within the scope of your alleged administrative authority.

**Failure to comply with this constructive notice of demand to verify authenticity of your authority will be an admission that all parties are willfully, with evil intent, engaging in criminal activity against me.**

**NOTICE: I reserve the right to enter this demand and all evidence attached within, to be preserved as evidence under Rule 902 (4), (5), (8), (9) and (10) of the Federal Rules of Evidence, upon the records of such public recorder's office at such place or places as I alone determine, which as a matter of public record shall be subject to submission and use in any legal proceeding thereafter as utilized by any person having cause to rely thereupon for evidence purpose, under the aforesaid Federal Rules of Evidence, and as for any other reasons that a public record of debt may be used, accordingly.**

**LEGAL DESCRIPTION:**

**Because of the before mentioned misrepresentations and omissions of the Law, and in order to protect my Right to Life, Liberty and the Pursuit of Happiness secured by the United States Constitution and the Constitution of the State of Illinois, it may from time to time become necessary to amend this Constructive Notice of Demand for Direct Challenge to Personal Authority. Wherefore, I do hereby declare that right herein.**

# UNOFFICIAL COPY

Michael Duane Davis, 2100 Jassel Road, Suite 103, Hoffman Estates, Illinois

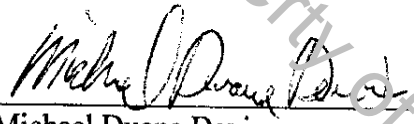
**Record Notice Act: When an instrument of conveyance or a mortgage is recorded in the appropriate public office, it is a constructive notice of its contents to the whole world.**

**Black's Law, Sixth Edition, Page 1275**

**Affidavit**

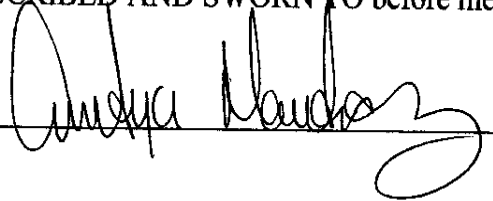
I, Michael Duane Davis, attest to the facts stated in this Constructive Notice of Demand for Direct Challenge to Personal Authority to be true and accurate to the best of my knowledge, including Exhibits A thru Y, attached.

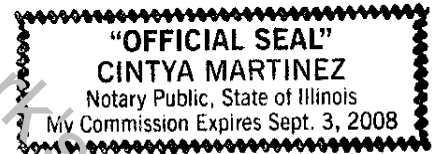
Sincerely Yours in Our Lord Jesus Christ

  
\_\_\_\_\_  
Michael Duane Davis

In the state of Illinois, County of Cook

SUBSCRIBED AND SWORN TO before me this 1 day of June, 2005

  
\_\_\_\_\_  
Notary Public



State IL County Cook

cc:

The Honorable Melissa Bean  
United States House of Representatives  
512 Cannon House Office Building  
Washington, D.C. 20515-1308

**UNOFFICIAL COPY**

**Social Security Administration**  
**Retirement, Survivors and Disability Insurance**  
Earnings Information

Office of Central Operations  
Baltimore, Maryland 21290-0300

Date: July 7, 2003  
Social Security Number: 361-58-4283  
Refer To: SPPC 43

MICHAEL D DAVIS  
2100 HASSELL RD APT 103  
HOFFMAN EST IL 60195-2213



Based on a revised report of your income from the Internal Revenue Service for the Tax Year 2000, we are reducing the amount of self-employment income credited to your Social Security earnings record from \$28,908.00 to \$0.00.

We may show up to one dollar more self-employment income than you originally reported. This is to make sure you receive credit on your earnings record for the full amount of your income since the Internal Revenue Service drops the cents from self-employment income amounts they report to us.

If you have any questions about this adjustment, you should get in touch with the Internal Revenue Service. If you have questions about other Social Security matters, call us at 1-800-772-1213. If you prefer to visit one of our offices, please check the local telephone directory for the office nearest you, or call us and we can give you the office address.

101478QF124786-NOTAF-X3.P35EAN OF.SI.R030705.P AM 00000000

County Clerk's Office

**EXHIBIT A**



Department of the Treasury  
Internal Revenue Service  
KANSAS CITY, MO 64999-0010

**UNOFFICIAL COPY**

Date of this notice: JUNE 2, 2003  
Taxpayer Identifying Number 361-58-4283  
Form: 1040 Tax Period: DEC. 31, 2000

For assistance you may  
call us at:  
1-800-829-0922



CALLER ID: 321952

MICHAEL D DAVIS  
2100 HASSELL RD APT 103  
HOFFMAN EST IL 60195-2213281

Property of Cook County Clerk's Office

**WE CHANGED YOUR ACCOUNT**

AS YOU REQUESTED, WE CHANGED YOUR ACCOUNT FOR 2000 TO CORRECT YOUR OTHER INCOME, SELF-EMPLOYMENT TAX, AND ADJUSTMENTS TO INCOME.

IF YOU HAVE ANY QUESTIONS, PLEASE CALL US AT THE NUMBER LISTED ABOVE.

**STATEMENT OF ACCOUNT**

ACCOUNT BALANCE BEFORE THIS CHANGE	\$10,478.27 DUE
DECREASE IN TAX BECAUSE OF THIS CHANGE	7,704.00CR
THE CIVIL PENALTY THAT WAS PREVIOUSLY CHARGED HAS BEEN REDUCED	1,541.00CR
DECREASE IN INTEREST PREVIOUSLY CHARGED *	1,233.27CR
AMOUNT YOU NOW OWE	NONE

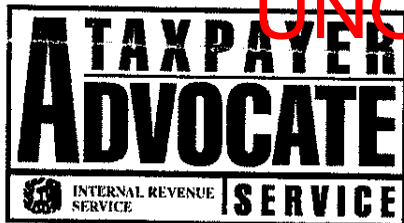
OUR ACTION IS THE RESULT OF YOUR INQUIRY OF APR. 21, 2003.

\* IF THIS INTEREST WAS PREVIOUSLY TAKEN AS A DEDUCTION, IT MUST NOW BE REPORTED AS INCOME ON YOUR NEXT INCOME TAX RETURN.

HELPFUL HINT: FOR FASTER SERVICE, TRY CALLING US ANY DAY EXCEPT MONDAY WHEN OUR CALL VOLUMES ARE HIGHEST.

**EXHIBIT A**

UNOFFICIAL COPY



PO Box 960 (Stop 102)  
Holtsville, NY 11742

Person to Contact: CHARLENE ISERINO  
Phone: 631 447-4966

Employee Number: 19-05876  
Tour of Duty: 6:30 AM to 3:30 PM

Michael D. Davis  
2100 Hassell Road Apt 103  
Offman Estates, IL 60195

Date: May 27, 2003  
Case Number: 3022927  
Taxpayer ID: 361-58-4283  
Tax Form(s): 1040  
Tax Period(s): 2000

Dear Mr. Davis:

After reviewing your inquiry dated May 14, 2003, we have accepted the information you provided and completely reversed the additional assessment on your account. At this time we are closing your inquiry in the Taxpayer Advocate Service.

If you have any questions, you can reach me Monday through Friday at the telephone number and hours of operation listed above. If you are outside the local calling area, there will be a charge for this call. If you prefer, you can write to me at the above address or reach me by fax at (631) 447-4204. Please provide a telephone number where you can be reached and the best time to call you.

Thank you for your patience and cooperation while this was being resolved. I sincerely apologize for any inconvenience this has caused you.

Sincerely,

Charlene Iserino  
Associate Advocate

**EXHIBIT A**

**UNOFFICIAL COPY**

PAGE NO-0001

IRS EMPLOYEE 1055241914

DATE REQUESTED 10-15-2003

PRINT DATE 10-16-2003

FORM NUMBER: 1040EZ

TAX PERIOD: DEC 2001

TAXPAYER IDENTIFICATION NUMBER: 361-58-4283

MICHAEL D DAVIS

2100 HASSELL RD SUITE-103

HOFFMAN EST

IL 60195-2253-999

BODC-WI BODCLC-

--- ANY MINUS BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	0.00	
ACCRUED INTEREST:	0.00	AS OF 10-20-2003
ACCRUED PENALTY:	0.00	AS OF 10-20-2003

ACCOUNT BALANCE PLUS ACCRUALS:	0.00
-----------------------------------	------

\*\* EXEMPTIONS: 01

\*\*FILING STATUS: SINGLE

\*\* ADJUSTED GROSS INCOME: 0.00

\*\* TAXABLE INCOME: 0.00

TAX PER RETURN: 0.00

\*\* PER RETURN OR AS ADJUSTED

04-15-2002 RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER)

05-20-2002 PROCESSING DATE

## TRANSACTIONS

CODE	EXPLANATION	DATE	MONEY AMOUNT (IF APPLICABLE)
150	RETURN FILED AND TAX ASSESSED 09207-111-48357-2	05-20-2002	0.00

**EXHIBIT A**

# UNOFFICIAL COPY

## RULES AND REGULATIONS

7710

### GENERAL PROVISIONS APPLICABLE TO §§ 458.1-458.24

- 458.30 Scope.
- 458.31 Permission to inspect.
- 458.32 Treasury Department officials and employees.
- 458.33 Inspection by branch of Government other than Treasury Department.
- 458.34 Inspection by Government attorneys.
- 458.35 Information returns.
- 458.36 Place of inspection.
- 458.37 Applications for inspection.
- 458.38 Penalties.
- 458.39 Former regulations revoked.

### INCOME RETURNS (INCLUDING PERSONAL HOLDING COMPANY AND UNJUST ENRICHMENT RETURNS), AND EXCESS-PROFITS AND CAPITAL STOCK TAX RETURNS, AND RETURNS OF EMPLOYMENT TAX ON EMPLOYEES UNDER SUBCHAPTER C OF CHAPTER 9 OF THE INTERNAL REVENUE CODE

- 458.50 Introductory.
- 458.51 Terms used.
- 458.52 Return of individual.
- 458.53 Joint return of husband and wife.
- 458.54 Partnership return.
- 458.55 Estates.
- 458.56 Trusts.
- 458.57 Corporations.

### ESTATE AND GIFT TAX RETURNS UNDER THE INTERNAL REVENUE CODE

- 458.58 General.
- 458.59 Application for inspection.
- 458.60 Disclosures for investigation purposes.
- 458.61 Inspection by State officials.
- 458.62 Inspection discretionary with Commissioner in certain cases.

### GENERAL PROVISIONS APPLICABLE TO §§ 458.51-458.62

- 458.63 Scope.
- 458.64 Permission to inspect.
- 458.65 Treasury Department officials and employees.
- 458.66 Inspection by branch of Government other than Treasury Department.
- 458.67 Inspection by Government attorneys.
- 458.68 Information returns.
- 458.69 Place of inspection.
- 458.70 Applications for inspection.
- 458.71 Penalties.

### INCOME AND EXCESS PROFITS TAX RETURNS, EXCEPT RETURNS UNDER TITLE III OF THE REVENUE ACT OF 1936, CAPITAL STOCK TAX RETURNS, AND RETURNS UNDER TITLE IX OF THE SOCIAL SECURITY ACT

- 458.80 Introductory.
- 458.81 Definitions.
- 458.82 Access to returns by State officers.
- 458.83 Examination of returns by shareholder.
- 458.84 Penalties for disclosure of returns.

### RETURNS UNDER TITLE III OF THE REVENUE ACT OF 1936

- 458.90 Inspection of returns by State taxing officials.
- 458.91 Examination of returns by shareholder.

### ESTATE AND GIFT TAX RETURNS FILED ON OR BEFORE JUNE 18, 1933

- 458.100 General.
- 458.101 Inspection by executor or donor.
- 458.102 Disclosure of information by revenue officer.
- 458.103 Inspection by State officers.
- 458.104 Inspection by person having material interest.
- 458.105 Inspection by Government attorneys.
- 458.106 Returns in custody of collector or revenue agent in charge.

### GENERAL PROVISIONS

- 458.110 Use of returns in litigation.
- 458.111 Furnishing of copies of returns.
- 458.112 Supplemental documents, records and reports.

### EXCISE TAX RETURNS

- 458.120 Introductory.
- 458.121 Inspection of excise tax returns.

### SUBPART B—USE OF ORIGINAL RETURNS OPEN TO INSPECTION IN ACCORDANCE WITH §§ 458.50-458.71; FURNISHING OF COPIES OF RETURNS; INSPECTION OF RETURNS OF CORPORATIONS BY STATE OFFICERS AND SHAREHOLDERS

#### INTRODUCTORY

- 458.200 Introductory.

#### SPECIAL PROVISIONS

- 458.201 Access to returns by State officers.
- 458.202 Inspection of returns by State taxing officials.
- 458.203 Examination of returns by shareholder.

#### GENERAL PROVISIONS

- 458.204 Use of returns in litigation.
- 458.205 Furnishing of copies of returns.
- 458.206 Supplemental documents, records and reports.
- 458.207 Penalties for disclosure of returns.
- 458.208 Terms used.
- 458.209 Prior regulations under code superseded.

### SUBPART C—INSPECTION UNDER SPECIAL EXECUTIVE ORDERS

- 458.300 Inspection of returns by Department of Commerce.
- 458.301 Inspection of statistical transcript punch cards by Federal Security Agency.
- 458.302 Inspection of income, excess-profits, and declared war excess-profits tax returns by the War Contracts Price Adjustment Board.
- 458.303 Inspection of returns by Federal Trade Commission.

### Subchapter F—Records and Procedure

#### PART 600—ORGANIZATION

#### PART 601—PROCEDURE

### EDITORIAL CHANGES INCIDENT TO PUBLICATION OF CODE OF FEDERAL REGULATIONS, 1949 EDITION

**EDITORIAL NOTE:** In order to conform Parts 600 and 601 of Title 26 to the scope and style of the Code of Federal Regulations, 1949 Edition, as prescribed by the Regulations of the Administrative Committee of the Federal Register approved by the President effective October 12, 1948 (13 F. R. 5929), the following editorial changes are made, effective upon their publication in the FEDERAL REGISTER:

1. The headnote of Subchapter F is amended to read "Records and Procedure."
2. Codification of Part 600, except § 600.1 (b), is discontinued. Future amendments to the statement of organization of the Bureau of Internal Revenue will appear in the Notices section of the FEDERAL REGISTER.
3. Section 600.1 (b) is retained under the headnote "Part 600—Records," and is reorganized and renumbered as outlined below:

### PART 600—RECORDS

- 600.1 Classification.
- 600.2 Publication and public inspection.

The internal subdivisions of former § 600.1 (b) are renumbered as shown in the following table:

Old number	New number
(1) -----	600.1
(1) (i) -----	600.1 (a)
(1) (ii) -----	600.1 (b)
(2) -----	600.2
(2) (i) -----	600.2 (a)
(2) (i) (a) -----	600.2 (a) (1)
(2) (i) (b) -----	600.2 (a) (2)
(2) (i) (c) -----	600.2 (a) (3)
(2) (i) (d) -----	600.2 (a) (4)
(2) (i) (e) -----	600.2 (a) (5)
(2) (i) (f) -----	600.2 (a) (6)
(2) (ii) -----	600.2 (b)
(2) (ii) (a) (revoked, 13 F. R. 3195) -----	
(2) (ii) (b) -----	600.2 (b) (1)
(2) (ii) (c) -----	600.2 (b) (2)
(2) (iii) -----	600.2 (c)
(2) (iv) -----	600.2 (d)

4. In Part 601 all references to Part 600 are deleted.

### TITLE 36—PARKS AND FORESTS

#### Chapter II—Forest Service, Department of Agriculture

#### PART 221—TIMBER

### REVISION OF REGULATIONS PERMITTING USE OF TIMBER RESOURCES ON NATIONAL FORESTS

Sections 221.1 to 221.31, Part 221, Chapter II, Title 36, Code of Federal Regulations, are superseded by the following regulations, effective December 31, 1948:

- 221.1 Timber uses.
- 221.2 Future growth, reduction of hazard, utilization.
- 221.3 Disposal of national forest timber according to management plans.
- 221.4 Cooperative and Federal sustained yield units.
- 221.5 Where timber may be cut.
- 221.6 Authorization to make sales.
- 221.7 Reappraisal.
- 221.8 Advertisement and bids.
- 221.9 Emergency sales.
- 221.10 Awards of advertised timber.
- 221.11 Financial standing of applicant or bidder.
- 221.12 Private sales of advertised timber.
- 221.13 Payment in advance of cutting; refunds and transfers.
- 221.14 Bonds.
- 221.15 Administration of sales.
- 221.16 Modifications and transfers of agreement.
- 221.17 Cancellation of agreements.
- 221.18 Breach of contract.
- 221.19 Sales of naval stores cuppage.
- 221.20 Sales of other forest products.
- 221.21 Sales of seized material.
- 221.22 Sales at cost.
- 221.23 Timber given in exchanges.
- 221.24 Administrative use for improvements, investigative use by government, relief, and non-profit organizations; primarily of benefit to the applicant.
- 221.25 Administrative use for protection, stand improvement, or investigations; primarily of benefit to the timber stand.
- 221.26 Free use by individuals

EXHIBIT B



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## PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW Washington, DC 20503.

1. Agency/Subagency originating request

Department of the Treasury  
Internal Revenue Service

R E C E I V E D

AUG 21 2000

2. OMB control number

b.  None

a. 1 5 4 5 - 0 0 8 2

3. Type of information collection (check one)

a.  New collection

b.  Revision of a currently approved collection

c.  Extension of a currently approved collection

d.  Reinstatement, without change, of a previously approved collection for which approval has expired

e.  Reinstatement, with change, of a previously approved collection for which approval has expired

f.  Existing collection in use  without an OMB control number

For b-f, note item A1 of Supporting Statement instructions

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4. Type of review requested (check one)

a.  Regular

b.  Emergency - Approval requested by: 10, 23, 00

c.  Delegated

5. Small entities

Will this information collection have a significant economic impact on a substantial number of small entities?  Yes  No

6. Requested expiration date

a.  Three years from approval date b.  Other Specify:      /      /     

7. Title U.S. Nonresident Alien Income Tax Return

8. Agency form number(s) (if applicable) Form 1040NR

9. Keywords 'alien, tax return'

10. Abstract Form 1040NR is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured. Affected public are nonresident alien individuals, estates, and trusts.

11. Affected public (Mark primary with "P" and all others that apply with "X")

a.  P Individuals or households d.  Farms

b.  Business or other for-profit e.  Federal Government

c.  Not-for-profit institutions f.  State, Local or Tribal Government

12. Obligation to respond (Mark primary with "P" and all others that apply with "X")

a.  Voluntary

b.  Required to obtain or retain benefits

c.  Mandatory

13. Annual reporting and recordkeeping hour burden

a. Number of respondents 271,000

b. Total annual responses 357,210

1. Percentage of these responses collected electronically 0 %

c. Total annual hours requested 4,090,651

d. Current OMB inventory 4,864,385

e. Difference +16,266

f. Explanation of difference

1. Program change +16,266

2. Adjustment     

14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

a. Total annualized ~~total~~ startup costs     

b. Total annual costs (O & M)     

c. Total annualized costs ~~requested~~     

d. Current OMB inventory     

e. Difference     

f. Explanation of difference

1. Program change     

2. Adjustment     

15. Purpose of information collection (Mark primary with "P" and all others that apply with "X")

a.  Application for benefits e.  Program planning or management

b.  Program evaluation f.  Research

c.  General purpose statistics g.  Regulatory or compliance

d.  Audit

16. Frequency of recordkeeping or reporting (check all that apply)

a.  Recordkeeping

b.  Third party disclosure

c.  Reporting

1.  On occasion 2.  Weekly 3.  Monthly

4.  Quarterly 5.  Semi-annually 6.  Annually

7.  Biennially 8.  Other (describe)     

17. Statistical methods

Does this information collection employ statistical methods?

Yes  No

18. Agency contact (person who can best answer questions regarding the content of this submission)

Name: Carol Savage

Phone: (202) 622-3945

EXHIBIT C

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**8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 1040NR.

In response to the Federal Register notice dated June 14, 2000, we received no comments during the comment period regarding Form 1040NR.

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

The burden estimate is as follows:

	<u>Number of Responses</u>	<u>Time per Response</u>	<u>Total Hours</u>
Form 1040NR	271,000	14.91	4,040,610
Student Loan Worksheet (line 25)	50,000	.44	22,000
Personal Exemption Worksheet (line 37)	5,360	.34	1,823
Itemized Deduction Worksheet (line 17)	3,750	.35	1,313
Capital Gain Tax Worksheet (line 39)	<u>27,100</u>	.55	<u>14,905</u>
<b>Total</b>	<b>357,210</b>		<b>4,080,651</b>

Please continue to assign OMB Number 1545-0089 to the following regulations.

EXHIBIT C

# UNOFFICIAL COPY

## Reporting Regulations

1.861-2(b) & (d)  
 1.861-3(a) & (c)  
 1.871-10(d)(1)(11)  
 1.871-10(d)(2)(iii)  
 1.874-1  
 1.6011-1  
 1.6012-1 through 1.6012-5  
 1.6012-6  
 301.7701(b)-8

## Regulations which impose no additional burden\*

1.871-7 & (b) & (c)  
 1.874-1(a)  
 1.1441-3  
 1.1441-3(b)  
 1.6012-1(b)  
 1.6091-3

\*We have reviewed these regulations and have determined that the reporting requirements contained in them are entirely reflected on Form 1040NR.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

### 13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated June 14, 2000, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

### 14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

After consultation with various functions within the Service, we have determined that the cost of developing, printing, processing, and overhead for the form is \$149,178.

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Approval is needed by 6/2/94.

Standard Form **83**  
(Rev. September 1983)

### Request for OMB Review

1545-0089

#### Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and the paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs  
Office of Management and Budget  
Attention: Docket Library, Room 3201  
Washington, DC 20503

RECEIVED  
SEP 7 1994

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#### PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request Department of the Treasury Internal Revenue Service		2. Agency code 0089 1 5 4 5
3. Name of person who can best answer questions regarding this request Martha Brinson		Telephone number (202) 622-5200
4. Title of information collection or rulemaking  U.S. Nonresident Alien Income Tax Return		
5. Legal authority for information collection or rule (cite United States Code, Public Law, or Executive Order) 26 USC 6011, 6012, 874, or		
6. Affected public (check all that apply)		
1 <input checked="" type="checkbox"/> Individuals or households	3 <input checked="" type="checkbox"/> Farms	5 <input type="checkbox"/> Federal agencies or employees
2 <input type="checkbox"/> State or local governments	4 <input checked="" type="checkbox"/> Businesses or other for profit	6 <input type="checkbox"/> Non-profit institutions
		7 <input checked="" type="checkbox"/> Small businesses or organizations

#### PART II.—Complete This Part Only If the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)  
\_\_\_\_\_, or, None assigned

8. Type of submission (check one in each category)		Type of review requested	
<b>Classification</b>	<b>Stage of development</b>	1 <input type="checkbox"/> Standard	2 <input type="checkbox"/> Pending
1 <input type="checkbox"/> Major	1 <input type="checkbox"/> Proposed or draft	3 <input type="checkbox"/> Emergency	4 <input type="checkbox"/> Statutory or judicial deadline
2 <input type="checkbox"/> Nonmajor	2 <input type="checkbox"/> Final or interim final, with prior proposal		
	3 <input type="checkbox"/> Final or interim final, without prior proposal		

9. CFR section affected  
\_\_\_\_\_ CFR

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320?  Yes  No

11. If a major rule, is there a regulatory impact analysis attached?  
If "No," did OMB waive the analysis?  Yes  No  Yes  No

#### Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official	Date
Signature of authorized regulatory contact	Date

#### 12. (OMB use only)

EXHIBIT C

**UNOFFICIAL COPY****PART III.—Complete This Part Only if the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.**13. Abstract—Describe needs, uses and affected public in 50 words or less **'Alien tax return'**

This form is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured. Affected public are nonresident alien individuals, estates, and trusts.

14. Type of information collection (check only one)

*Information collections not contained in rules*1  Regular submission2  Emergency submission (certification attached)*Information collections contained in rules*3  Existing regulation (no change proposed)

6 Final or interim final without prior NPRM

7. Enter date of expected or actual Federal

4  Notice of proposed rulemaking (NPRM)A  Regular submission

Register publication at this stage of rulemaking

5  Final, NPRM was previously publishedB  Emergency submission (certification attached)

(month, day, year): \_\_\_\_\_

15. Type of review requested (check only one)

1  New collection4  Reinstatement of a previously approved collection for which approval has expired2  Revision of a currently approved collection3  Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection5  Existing collection in use without an OMB control number

16. Agency report form number(s) (include standard/optional form number(s))

Form 1040NR

17. Annual reporting or disclosure burden

1 Number of respondents

271,000

2 Number of responses per respondent

\*

3 Total annual responses (line 1 times line 2)

297,535

4 Hours per response

\*

5 Total hours (line 3 times line 4)

1,807,722

18. Annual recordkeeping burden

1 Number of recordkeepers

271,000

2 Annual hours per recordkeeper

\*

3 Total recordkeeping hours (line 1 times line 2)

1,778,031

4 Recordkeeping retention period

3 years

19. Total annual burden

1 Requested (line 17-5 plus line 18-3)

3,585,753

2 In current OMB inventory

3,615,606

3 Difference (line 1 less line 2)

-29,853

**Explanation of difference**

4 Program change

-29,853

5 Adjustment

20. Current (most recent) OMB control number or comment number

1545-0089

21. Requested expiration date

10-31-97

22. Purpose of information collection (check as many as apply)

1  Application for benefits2  Program evaluation3  General purpose statistics4  Regulatory or compliance5  Program planning or management6  Research7  Audit

23. Frequency of recordkeeping or reporting (check all that apply)

1  Recordkeeping**Reporting**2  On occasion3  Weekly4  Monthly5  Quarterly6  Semi-annually7  Annually8  Biennially9  Other (describe): \_\_\_\_\_

24. Respondents' obligation to comply (check the strongest obligation that applies)

1  Voluntary2  Required to obtain or retain a benefit3  Mandatory25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs?  Yes  No26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents?  Yes  No27. Regulatory authority for the information collection 

26

CFR

1.874-1 &amp; 1.6011-1

; or

FR

; or, Other (specify): \_\_\_\_\_

1.6012-1 - 1.6012-5

**Paperwork Certification**

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official

Garrick R. Shear

IRS Reports Clearance Officer

Date

SEP - 1 1994

Signature of agency head, the senior official or an authorized representative

Departmental Reports  
Management Officer

Date

SEP 02 1994

EXHIBIT C

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Please continue to assign OMB number 1545-0089 to these previously approved regulations.

Reporting Regulations

1.861-2(b) & (d)  
 1.861-3(a) & (c)  
 1.871-10(d)(1)(ii)  
 1.871-10(d)(2)(iii)  
 1.874-1  
 1.6011-1  
 1.6012-1 through 1.6012-5  
 1.6012-6  
 301.770(b)-8

Regulations which impose no additional burden\*

1.871-7 & 10(b) & (c)  
 1.874-1(a)  
 1.4441-3  
 1.1441-3(b)  
 1.6012-1(b)  
 1.6091-3

\*We have reviewed these regulations and have determined that the reporting requirements contained in them are entirely reflected on the Form 1040NR.

**14. Reasons for Change in Burden****a. Form 1040NR**

(i) Lines 14 and 15 of the 1993 form have been combined to conform to Form 1040. Capital gains distributions previously reported on line 15 when Schedule D was not required will now be reported on line 14. "CGD" will be written on the dotted line to the left of line 14 to indicate Schedule D is not required.

(ii) Line 25.-This new line was added for 1994 moving expenses. The Revenue Reconciliation Act of 1993 changed moving expenses to an above-the-line deduction for expenses incurred after 1993. This results in an increase in burden since one line is being added.

(iii) Line 37.-This line was revised to reflect that the maximum capital gains rate tax computation is now done on the Capital Gain Tax Worksheet, which was moved to the line 37 instructions from the Schedule D instructions. This will now allow taxpayers to use this lower tax computation without having to file Schedule D when they only have capital gains distributions.

**EXHIBIT C**

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## PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send three copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

<b>1. Agency/Subagency originating request</b> Department of the Treasury/IRS	<b>2. OMB control number</b> a. <u>1545-0074</u> b. <u>None</u>
<b>3. Type of information collection (check one)</b> a. <u>  </u> New collection b. <input checked="" type="checkbox"/> Revision of a currently approved collection c. <u>  </u> Extension of a currently approved collection d. <u>  </u> Reinstatement, without change, of a previously approved collection for which approval has expired e. <u>  </u> Reinstatement, with change, of a previously approved collection for which approval has expired f. <u>  </u> Existing collection in use without an OMB control number  For b-f, note item A2 of Supporting Statement instructions	<b>4. Type of review requested (check one)</b> a. <input checked="" type="checkbox"/> Regular submission b. <u>  </u> Emergency - approval requested by: <u>10/01/98</u> c. <u>  </u> Delegated  <b>5. Small entities</b> Will this information collection have a significant economic impact on a substantial number of small entities? <u>  </u> Yes <input checked="" type="checkbox"/> No  <b>6. Requested expiration date</b> a. <u>  </u> Three years from approval date b. <input checked="" type="checkbox"/> Other Specify: <u>2/2001</u>
<b>7. Title:</b> U.S. Individual Income Tax Return	
<b>8. Agency form number (s) (if applicable):</b> Form 1040 and Schedules A, B, C, C-EZ, D, D-1, E, SIG, P, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z	
<b>9. Keywords:</b> Personal Income Taxes, Tax Return	
<b>10. Abstract:</b> These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.	
<b>11. Affected public (Mark primary with "P" and all others that apply with "I")</b> a. <u>P</u> Individuals or households      d. <u>  </u> Farms b. <u>  </u> Business or other for-profit      e. <u>  </u> Federal Gov. c. <u>  </u> Not-for-profit institutions      f. <u>  </u> State, Local or Tribal Gov.	<b>12. Obligation to respond (Mark primary with "P" and all others that apply with "X")</b> a. <u>  </u> Voluntary b. <u>  </u> Required to obtain or retain benefits c. <input checked="" type="checkbox"/> Mandatory
<b>13. Annual reporting and recordkeeping hour burden</b> a. Number of respondents <u>71,877,464</u> b. Total annual responses <u>276,493,973</u> 1. Percentage of these responses collected electronically <u>6%</u> c. Total annual hours requested <u>1,211,582,312</u> d. Current OMB inventory <u>1,143,129,008</u> e. Difference <u>+68,453,304</u> f. Explanation of differences 1. Program change (+, -) <u>+38,495,728</u> 2. Adjustment (+, -) <u>+29,957,576</u>	<b>14. Annual reporting and recordkeeping cost burden (in thousands of dollars)</b> a. Total annual capital/startup costs _____ b. Total annual cost (O&M) _____ c. Total annualize / cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of differences 1. Program change _____ 2. Adjustment _____
<b>15. Purpose of information collection (Mark primary with "P" and all others that apply with "X")</b> a. <u>  </u> Application for benefits      e. <u>  </u> Program planning or Mgmt b. <u>  </u> Program evaluation      f. <u>  </u> Research c. <u>  </u> General purpose statistics      g. <input checked="" type="checkbox"/> Regulatory or compliance d. <u>  </u> Audit	<b>16. Frequency of recordkeeping or reporting (check all that apply)</b> a. <input checked="" type="checkbox"/> Recordkeeping      b. <u>  </u> Third party disclosure c. <input checked="" type="checkbox"/> Reporting 1. <u>  </u> On occasion      2. <u>  </u> Weekly      3. <u>  </u> Monthly 4. <u>  </u> Quarterly      5. <u>  </u> Semi-annually      6. <input checked="" type="checkbox"/> Annually 7. <u>  </u> Biennially      8. <u>  </u> Other (describe) _____
<b>17. Statistical methods</b>  Does this information collection employ statistical methods?  <u>  </u> Yes <input checked="" type="checkbox"/> No	<b>18. Agency contact (person who can best answer questions regarding the content of this submission)</b>  Name: <u>Martha Brinson</u> Phone: <u>202-622-5200</u>

EXHIBIT D

**19. Certification for Paperwork Reduction Act Submissions**

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8 (b) (3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8 (b) (3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality, and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

*If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.*

Signature of Program Official Garrick R. Shear, IRS Reports Clearance Officer	<i>G. Shear</i>	Date 9/15/98
Signature of Senior Official or designee <i>Dale Ann Morgan</i>	Departmental Reports Management Officer	Date 9/16/98

OMB 83-I

10/95

**EXHIBIT D**



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## DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

September 16, 1998

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before [insert date 30 days after publication in the Federal Register] to be assured of consideration.

### INTERNAL REVENUE SERVICE (IRS)

OMB Number: 1545-0074

Form Number: IRS Form 1040 and Schedules A, B, C, C-EZ, D, D-1, E, EIC, F, H, J, R, and SE

Type of Review: Revision

Title: U.S. Individual Income Tax Return

Description: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

Respondents: Individuals or households

Estimated Number of Respondents/Recordkeepers: 71,877,464

Estimated Burden Hours Per Respondent/Recordkeeper: Varies

EXHIBIT D

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## Supporting Statement for Form 1040

IRS Forms 1040 and 1040-V, and Schedules A, B, C, C-EZ, D, D-1, E, EIC, F, H, J, R, and SE

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

IRC sections 6011 & 6012 of the Internal Revenue Code require individuals to prepare and file income tax returns annually. Form 1040, and related schedules, are used by individuals to report their income subject to tax and compute their correct tax liability.

Form 1040-V is used by taxpayers making a payment with their return.

Schedule A is used to claim itemized deductions (medical and dental expenses, taxes, interest, contributions, casualty or theft losses, and miscellaneous deductions) allowed by IRC sections 67, 163, 164, 165, 170, 211, 212, 213, 217, and 222, and to figure the overall limitation on itemized deductions required by IRC section 68.

Schedule B is used to report interest and/or ordinary dividend income over \$400 and ownership or signature authority for foreign accounts and trusts. (Public law 91-508, IRC section 61.)

Schedules C and C-EZ are used to report gross income, expenses, and net profit or loss from operating a business or profession as a sole proprietorship. (IRC section 61.)

Schedules D and D-1 are used to report and summarize capital gains and losses. (IRC sections 1201-1233.)

Schedule E is used to report and summarize income from rents, royalties, partnerships, S corporations, estates, trusts, REMICS, etc. (IRC section 61.)

Schedule EIC is used to identify qualifying children for the earned income credit. The form is required by Congress in the committee reports for section 11111 of OBRA 90, amending IRC section 32. The form will allow IRS to determine that valid qualifying children are being claimed, and will also be used for statistical purposes.

Schedule F is used to report gross income, expenses, and net profit or loss from farming. (IRC section 61.)

Schedule H is used by household employers to report household employment taxes. (IRC section 3510.)

Schedule J is used by taxpayers with farm income to figure their tax using income averaging. (IRC section 1301.)

Schedule R is used to help verify that the taxpayer is entitled to the credit for the elderly or the disabled, that it is properly computed, and also for general statistical use.

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## Supporting Statement for Form 1040

Schedule SE is used by self-employed individuals and employees of electing churches and qualified church-controlled organizations to figure any self-employment tax. (IRC sections 1404 and 1402.)

### 2. USE OF DATA

The data on Form 1040 and its schedules will be used in computing the tax liability and in determining that the items claimed are properly allowable. It is also used for general statistical use.

### 3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Approximately 6% of Forms 1040 are filed electronically.

### 4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

### 5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

### 6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

### 7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 C.F.R. 1320.5 (d) (2)

Not applicable.

### 8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 1040. In addition, we receive comments from other interested outside groups and from individuals. In response to the Federal Register Notice dated July 7, 1998, we received no comments during the comment period regarding Form 1040 and its schedules.

### 9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

### 10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

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## Supporting Statement for Form 1040

### 11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

### 12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Form	Responses	Time per Response	Adjustments	Program Change	Burden
1040	71,877,464	8.75	21,092,598	20,844,465	628,927,810
Student Loan W/S	4,000,000	0.60	0	2,400,000	2,400,000
Child credit W/S	10,000,000	1.63	0	16,300,000	16,300,000
Exemption W/S	3,679,650	0.32	0	0	1,177,488
AMT Worksheet	4,000,000	0.42	0	0	1,680,000
EIC Worksheet	7,185,349	1.46	637,568	0	10,490,610
Form 1040-V OTC pre-printed	7,000,000	0.21	0	0	1,470,000
	13,000,000	0.13	0	0	1,690,000
Sch A Worksheet	34,007,717	4.23	4,187,544	0	143,852,643
	3,432,239	0.36	0	0	1,235,624
Sch B	31,725,690	1.22	(1,192,262)	(2,855,312)	38,705,342
Sch C Part IV	16,421,458	9.75	2,629,800	0	160,109,216
	5,155,718	0.55	76,693	0	2,887,202
Sch C-EZ	2,187,621	1.72	392,101	0	3,762,708
Sch D Part IV--CGDs Loss Worksht	15,792,487	4.43	2,183,334	0	69,960,717
	4,671,253	1.41	43,411	(93,425)	6,586,467
	2,298,088	0.43	0	0	988,178
Sch. D (line 25) Worksheet	500,000	.89	0	445,000	445,000
Sch D-1	2,542,402	1.01	0	0	2,567,826
Sch E	14,472,883	5.82	967,552	0	84,232,179
Sch EIC	5,471,614	0.46	99,708	0	2,516,942
Sch F--Parts 1&2	2,244,008	6.22	(128,878)	0	13,957,730
Sch F--Parts 2&3	12,035	6.44	19,481	0	77,505
Schedule H	288,680	2.64	(1,138,685)	0	762,115
Schedule J	1,000,000	1.31	0	1,310,000	1,310,000
Schedule J (95 Capital Gain Worksheet)	250,000	.49	0	122,500	122,500

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## Supporting Statement for Form 1040

-----					
Schedule J (96 Capital Gain Worksheet)	250,000	.49	0	122,500	122,500
-----					
Schedule R	137,223	1.53 /	(139,975)	0	209,951
-----					
Sch SE--Short	12,011,238	0.96	56,934	0	11,530,788
Sch SE--Long	879,106	1.71	70,652	0	1,503,271
-----					
<b>TOTALS</b>	<b>276,493,973</b>		<b>29,857,576</b>	<b>38,595,728</b>	<b>1,211,582,312</b>
=====					

Estimates of the annualized cost to respondents for the hour burdens shown above are not available at this time.

12. Burden Estimation (continued). We are asking for continued approval of these regulations that are associated with Form 1040. Please continue to assign OMB number 1545-0074 to these regulations:

- 1.23-5
- 1.31-2
- 1.37-2 and 3
- 1.41-4
- 1.41-4A
- 1.43-2
- 1.44A-3
- 1.52-4
- 1.61-15
- 1.63-1
- 1.64(c)6
- 1.71-1
- 1.72
- 1.79-2 and 3
- 1.83-2 thru 5
- 1.105
- 1.151-1
- 1.152-4 and 4T
- 1.162-24
- 1.163-10T
- 1.166-10
- 1.170
- 1.170A
- 1.172
- 1.180-2
- 1.182-6
- 1.190-3
- 1.213-1
- 1.215-1

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## Supporting Statement for Form 1040

1.254-1  
1.265-1  
1.274-5T and 6T  
1.280A-3  
1.280F-3T  
1.302-4  
1.307-2  
1.333-1  
1.351-3  
1.383-1  
1.442-1  
1.446-1  
1.451-5 thru 7  
1.454-1  
1.461-1  
1.466-1  
1.551-4  
1.612-4  
1.642(c) -5 and 6  
1.702-1  
1.706-1  
1.736-1  
1.743-1  
1.751-1  
1.852-7 and 9  
1.931-1  
1.935-1  
1.1012-1  
1.1041-1T  
1.1081-11  
1.1101-4  
1.1211-1  
1.1212-1  
1.1231-2  
1.1232-3  
1.1248-7  
1.1251-2  
1.1254-1 and 3  
1.1304-1 thru 5  
1.1311(a) -1  
1.1383-1  
1.1385-1  
1.1402(a) -2, 5, 11, 15,  
1 6 1.1402(c) -2  
1.1402(e) - (2) -1  
1.1402(f) -1  
1.6001-1  
1.6060-1  
1.6072-1  
1.6107-1  
1.6109-1 and 2

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## Supporting Statement for Form 1040

1.6011-1  
1.6012-1  
1.6013-1, 6, 7  
1.6017-1  
1.6060-1  
1.6072-1  
1.6107-1  
1.6109-1  
1.6151-1  
1.6695-1  
1.6696-1  
1.9100-1  
5c.0  
7.0  
16A.126-2  
18.1-7  
31.6011(a)-1 and 7  
301.6110-3 and 5  
301.6316-4 thru 6  
301.6361-1 and 3  
301.6501  
301.6501(d)  
301.6905-1  
301.7216-2

The following are citations to 26 U.S.C.:

61  
72  
79  
83  
126  
162(h)  
170  
172(b), (c), (h)  
180  
182  
265  
301  
307  
317  
318  
331  
332  
351  
403  
454  
518(c)(18) 551  
613(g)  
642(c)  
735  
736

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## Supporting Statement for Form 1040

852  
857  
1012  
1034 (i)  
1037  
1081  
1101  
1232A  
6011  
6012  
6061  
6107  
7216

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## Supporting Statement for Form 1040

### 13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register Notice dated July 7, 1998, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of these cost burdens are not available at this time.

### 14. ESTIMATED ANNUALIZED COSTS TO THE FEDERAL GOVERNMENT

The primary cost to the government consists of the cost of printing these forms. We estimate that the cost of printing Form 1040 and its schedules, including the tax packages, is \$15,000,000.

### 15. REASONS FOR CHANGE IN BURDEN

#### Major Changes to Form 1040

- a. We added line 24 for the student loan interest deduction to reflect new Internal Revenue Code section 221. To make room for this line, we removed the extra blank line on line 21. We will not create a new form for figuring this deduction; it will be figured in a worksheet in the instructions.
- b. We added line 44 for education credits (the Hope and lifetime learning credits) allowed by section 25A, figured on Form 8863.
- c. We added line 43 for the child tax credit allowed by new section 24. It will be figured in a worksheet in the instructions. We added line 60, in the payments section, for the additional (refundable) amount of the credit, which is figured on Form 8812. The supplemental credit is allowed by section 32(n).  
  
We revised line 6c, column (4), to allow taxpayers to indicate which dependents qualify for the child tax credit (one of the requirements is that the child must be a dependent). This will prevent taxpayers from having to enter again on Form 8812 the name and SSN of the dependent children. This removes the information previously in column (4) regarding the number of months the dependent lived in the taxpayer's home. However, this information is still collected on Schedule EIC, and we therefore believe that the benefits from revising column (4) outweigh the loss of the number of months information for non-EIC dependents. This change will not affect the burden.
- d. To make room for the three new lines on page 2, we moved the standard deduction amounts to the margin.
- e. We added "if required" on line 46 to reflect that Form 1116 is not required in all cases for 1998 (new section 904(j)).

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## Supporting Statement for Form 1040

### Instructions for Form 1040

#### GENERAL CHANGES

We increased the point size and leading of the text in the instructions. We held several focus groups, and this was the most common suggestion we received about our instructions. The number of pages has increased substantially, but we believe this has made the instructions much easier for taxpayers to use.

#### Deletions from the Instructions (using old page numbers of the 1040 instructions)

##### Page 6

We deleted What's New for 1997 and What To Look for in 1998 and replaced it with a more detailed What's New for 1998.

##### Page 9

We removed the information about the old 1099-DIV.

##### Page 11

We deleted instructions for old line 6c, column (4).

##### Page 16

We deleted the old IRA worksheet, and the text on Married filing separately to reflect changes made to section 219(g).

##### Page 17

We deleted the TIP on long-term care insurance for the self-employed health insurance deduction because it is no longer new and is uncommon.

##### Page 18

We deleted the requirement to attach a statement if completely blind, partially blind, or permanently partially blind, to reduce taxpayer burden. We found we were not making much use of these statements.

##### Page 19

We revised instructions for the Tax Table and Tax Rate to reflect new Schedule J (section 1301).

#### Additions to the Instructions (using new page numbers of the 1040 instructions)

##### Page 6

We deleted information on 1997 and 1998, and replaced it with more detailed information about new items for 1998.

##### Page 10

We added information about new Form 1098-E and revised Form 1099-DIV.

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## Supporting Statement for Form 1040

### Page 12

We added text telling taxpayers to enter their SSNs on a joint return in the same order as they did the previous year. This prevents possible processing errors when the SSNs are reversed from one year to the next. We also added text telling taxpayers that their SSN(s) are no longer on the mailing label, and therefore must be entered on the return. We also relocated ATIN text from old page 6 here.

### Page 13

We added instructions for revised line 6c, column (4).

### Page 16

We added text on Roth IRA rollovers, new for 1998, and excess contributions to an IRA, based on information that such contributions are now occurring more frequently.

### Page 19

We added a bullet item to state that Roth and Education IRAs are not eligible for a deduction (only traditional IRAs are eligible).

### Page 20

We added a new IRA worksheet to reflect the fact that a taxpayer who does not participate in an employer retirement plan but whose spouse does can now take an IRA deduction at higher income levels (section 219(g)).

### Page 21

We added instructions and a worksheet for new line 24, student loan interest deduction (section 221).

### Page 22

We revised the blindness instructions to remove the requirement to attach a statement if completely blind, partially blind, or permanently partially blind, to reduce taxpayer burden. We found we were not making much use of these statements.

### Page 23

We added 1 line to the Standard Deduction Worksheet for Dependents to reflect the change to section 63(c)(5). We also pre-printed the new additional standard deduction amount.

### Page 24

We added revised instructions for the Tax Table and Tax Rate Schedules, and new instructions for Schedule J, to reflect new Schedule J (section 1301).

### Pages 25, 26, and 27

We added text and two worksheets for new line 43 to reflect the child tax credit allowed by new section 24.

EXHIBIT D

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## Supporting Statement for Form 1040

### Page 27

We added instructions for new line 44, to reflect Form 8863 (section 25A). We added instructions for line 46 to reflect the new de minimis rule for filing Form 1116 (new section 904(j)).

The above changes will result in a program change increase of 39,544,465 hours for Form 1040.

We received better filing figures and we are requesting an adjustment increase of 21,730,166 hours for Form 1040.

### Schedules A&B and Instructions

There are no changes to Schedule A.

We removed lines 7 through 10 of Schedule B. The amount of ordinary dividends from box 1 of Form 1099-DIV will be entered on line 5 instead of the amount of gross dividends from the 1997 Form 1099-DIV, box 1a. It will therefore no longer be necessary to enter the amount of capital gain distributions and nontaxable distributions and subtract the total of those amounts from the total gross dividends. Capital gain distributions will be reported only on Schedule D. Nontaxable distributions will not be reported on the return, as we do not need them to compute tax.

### Page A-1

We added text on long-term care premiums as suggested by the AICPA.

### Page A-2

We added text on real estate taxes shown on a settlement statement, as suggested by the AICPA.

### Page B-1

We revised the text on tax-exempt interest and amortizable bond premium, for consistency with other text and to reduce the amount of text. We also revised the first paragraph of the line 5 instructions to reflect the changes made to Schedule B.

The above change will result in a program change decrease of 2,855,312 hours for Schedule B.

We received better filing figures and we are requesting an adjustment increase of 4,187,544 hours for Schedule A and an adjustment decrease of 1,192,262 hours for Schedule B.

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## Supporting Statement for Form 1040

### Schedules C and C-EZ and Instructions

We revised line B on both forms to accommodate a new six-digit business code, requested by SOI.

We added the new codes to pages C-8 and C-9 of the instructions for Schedule C and also added information under **A Change To Note** alerting taxpayers to the new codes.

We received better filing figures and we are requesting an adjustment increase of 2,706,493 hours for Schedule C and an adjustment increase of 392,101 hours for Schedule C-EZ.

### Schedules D and D-1 and Instructions

We revised the footnote on page 1 of Schedule D and page 2 of Schedule D-1 to remove references to the 1997 effective date. We also revised the text on Schedule D, line 29, for clarity, based on taxpayer feedback.

We deleted the instructions for line 25 and replaced them with a worksheet, at the suggestion of the AICPA. We added a chart (page 7) to show taxpayers who receive only capital gain distributions (about 5 million taxpayers) how to report the amounts reported to them on Form 1099.

The above changes will result in a program change increase of 351,575 hours for Schedule D due to the worksheet. We received better filing figures and we are requesting an adjustment increase of 2,226,745 hours for Schedule D.

### Schedule E Instructions

We added a note on page E-6, at the request of Chief Counsel. There were no major changes to Schedule E.

We received better filing figures and we are requesting an adjustment increase of 967,552 hours for Schedule E.

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## Supporting Statement for Form 1040

### Schedule F

We revised line B to accommodate a new six-digit code, requested by SOI. We also added information under Changes To Note alerting taxpayers to the new codes and giving them information about new Schedule J, Farm Income Averaging.

We received better filing figures and we are requesting an adjustment decrease of 109,397 hours for Schedule F.

### Schedule J

We created new Schedule J to implement section 1301 of the Code, as added by section 933(a) of Public Law 105-34.

This will result in a program change increase of 1,555,000 hours for Schedule J.

### Schedule R

We deleted the physician's statement from the form and moved it to the instructions, because we are no longer using it. This will not affect the burden.

We received better filing figures and we are requesting an adjustment decrease of 139,975 hours.

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## Supporting Statement for Form 1040

### All other Schedules and Instructions

Form 1040-V and Schedules A, E, EIC, H, and SE, and the instructions for Schedules B, H, and SE have no major changes.

We received better filing figures for Schedule EIC and we are requesting an adjustment increase of 99,708 hours.

We received better filing figures for Schedule H and we are requesting and adjustment decrease of 1,138,685 hours.

We received better filing figures for Schedule SE and we are requesting an adjustment increase of 127,586 hours for Schedule SE.

### TOTAL PROGRAM CHANGE AND NET ADJUSTMENT FOR ALL FORMS AND SCHEDULES

The above changes for Form 1040, schedules, and payment vouchers and their instructions will result in a net program change increase of 38,595,728 hours.

We received better filing figures and we are requesting a net adjustment increase of 29,857,576 hours.

### 16. PLANS FOR TABULATION, STATISTICAL ANALYSIS, AND PUBLICATION

Not applicable.

### 17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

See attachment.

### 18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

EXHIBIT D

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## DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

November 4, 1998

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the **Paperwork Reduction Act of 1995, Public Law 104-13**. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before [insert date 30 days after publication in the Federal Register] to be assured of consideration.

### INTERNAL REVENUE SERVICE (IRS)

OMB Number: 1545-0074

Form Number: IRS Form 1040 and Schedules A, B, C, C-EZ, D, D-1, E, EIC, F, H, J, R, and SE

Type of Review: Revision

Title: U.S. Individual Income Tax Return

Description: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

Respondents: Individuals or households

EXHIBIT D



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Estimated Number of Respondents/Recordkeepers: 71,877,464Estimated Burden Hours Per Respondent/Recordkeeper:

Form/Schedule	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS	Totals
Form 1040	3 hr., 34 min.	2 hr., 13 min.	4 hr., 30 min.	7 min.	10 hr., 57 min.
Schedule A	2 hr., 32 min.	26 min.	1 hr., 10 min.	27 min.	4 hr., 35 min.
Schedule B	33 min.	8 min.	11 min.	20 min.	1 hr., 12 min.
Schedule C	6 hr., 26 min.	1 hr., 11 min.	2 hr., 6 min.	35 min.	10 hr., 18 min.
Schedule C-EZ	46 min.	4 min.	34 min.	20 min.	1 hr., 4 min.
Schedule D	1 hr., 11 min.	2 hr., 7 min.	2 hr., 39 min.	1 hr., 3 min.	4 hr., 10 min.
Schedule D-1	13 min.	1 min.	11 min.	35 min.	1 hr., 0 min.
Schedule E	2 hr., 52 min.	1 hr., 7 min.	1 hr., 16 min.	35 min.	5 hr., 10 min.
Schedule EIC	-----	2 min.	5 min.	20 min.	27 min.
Schedule F: Cash Method	4 hr., 2 min.	36 min.	1 hr., 14 min.	20 min.	6 hr., 12 min.
Accrual Method	4 hr., 22 min.	25 min.	1 hr., 19 min.	20 min.	6 hr., 26 min.
Schedule H	46 min.	30 min.	48 min.	35 min.	1 hr., 35 min.
Schedule J	20 min.	8 min.	1 hr., 8 min.	41 min.	2 hr., 17 min.
Schedule R	20 min.	15 min.	22 min.	35 min.	1 hr., 32 min.
Schedule SE: Short	20 min.	13 min.	11 min.	14 min.	58 min.
Long	26 min.	22 min.	34 min.	20 min.	1 hr., 2 min.

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 1,211,582,312 hours**EXHIBIT D**

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Clearance Officer: Garrick Shear (202) 622-3869

Internal Revenue Service

Room 5571

1111 Constitution Avenue, N.W.

Washington, DC 20224

OMB Reviewer: Alexander T. Hunt (202) 395-7860

Office of Management and Budget

Room 10226, New Executive Office Building

Washington, DC 20503



Lois K. Holland

Departmental Reports

Management Officer

**BILLING CODE: 4830-01**

**EXHIBIT D**

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## PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW Washington, DC 20503.

<p>1. Agency/Subagency originating request  <b>Department of the Treasury          Internal Revenue Service</b></p>	<p>2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span>  <u>a. 1 5 4 5 - 0 0 7 4</u> <span style="float: right;">-----</span></p>
<p>3. Type of information collection (check one)</p> <p>a. <input type="checkbox"/> New collection          b. <input checked="" type="checkbox"/> Revision of a currently approved collection          c. <input type="checkbox"/> Extension of a currently approved collection          d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired          e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired          f. <input type="checkbox"/> Existing collection in use without an OMB control number</p> <p><i>For b-f, note item 12 of Supporting Statement instructions</i></p>	<p>4. Type of review requested (check one)</p> <p>a. <input checked="" type="checkbox"/> Regular          b. <input type="checkbox"/> Emergency - Approval requested by: <u>09</u> / <u>27</u> / <u>96</u>          c. <input type="checkbox"/> Delegated</p> <p>5. Small entities          Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>6. Requested expiration date          a. <input checked="" type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____</p>
<p>7. Title  <b>U.S. Individual Income Tax Return</b></p>	
<p>8. Agency form number(s) (if applicable)  <b>Form 1040 and Schedules A, B, C, C-EZ, D, E, EIC, F, HAIR, and SE</b></p>	
<p>9. Keywords  <b>'Personal Income Taxes, Tax Return'</b></p>	
<p>10. Abstract  <b>These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.</b></p>	
<p>11. Affected public (Mark primary with "P" and all others that apply with "X")</p> <p>a. <u>P</u> Individuals or households          b. ___ Business or other for-profit          c. ___ Not-for-profit institutions          d. ___ Farms          e. ___ Federal Government          f. ___ State, Local or Tribal Government</p>	<p>12. Obligation to respond (Mark primary with "P" and all others that apply with "X")</p> <p>a. <input type="checkbox"/> Voluntary          b. <input type="checkbox"/> Required to obtain or retain benefits          c. <input checked="" type="checkbox"/> Mandatory</p>
<p>13. Annual reporting and recordkeeping hour burden</p> <p>a. Number of respondents <u>69,269,664</u>          b. Total annual responses <u>247,164,408</u></p> <p>1. Percentage of these responses collected electronically <u>6</u> %</p> <p>c. Total annual hours requested <u>1,141,694,310</u>          d. Current OMB inventory <u>1,128,204,754</u>          e. Difference <u>+13,489,556</u></p> <p>f. Explanation of difference</p> <p>1. Program change <u>-58,088,376</u>          2. Adjustment <u>+71,577,932</u></p>	<p>14. Annual reporting and recordkeeping cost burden (in thousands of dollars)</p> <p>a. Total annualized capital/startup costs _____          b. Total annual costs (OMB) _____          c. Total annualized cost requested _____          d. Current OMB inventory _____</p> <p>e. Difference</p> <p>1. Explanation of difference _____          2. Adjustment _____</p>
<p>15. Purpose of information collection (Mark primary with "P" and all others that apply with "X")</p> <p>a. ___ Application for benefits          b. ___ Program evaluation          c. ___ General purpose statistics          d. ___ Audit          e. ___ Program planning or management          f. ___ Research          g. <u>P</u> Regulatory or compliance</p>	<p>16. Frequency of recordkeeping or reporting (check all that apply)</p> <p>a. <input checked="" type="checkbox"/> Recordkeeping <span style="float: right;">b. <input type="checkbox"/> Third party disclosure</span>          c. <input checked="" type="checkbox"/> Reporting</p> <p>1. <input type="checkbox"/> On occasion <span style="float: right;">2. <input type="checkbox"/> Weekly <span style="float: right;">3. <input type="checkbox"/> Monthly</span></span>          4. <input type="checkbox"/> Quarterly <span style="float: right;">5. <input type="checkbox"/> Semi-annually <span style="float: right;">6. <input checked="" type="checkbox"/> Annually</span></span>          7. <input type="checkbox"/> Biennially <span style="float: right;">8. <input type="checkbox"/> Other (describe) _____</span></p>
<p>17. Statistical methods          Does this information collection employ statistical methods?  <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p>	<p>18. Agency contact (person who can best answer questions regarding the content of this submission)</p> <p>Name: <u>Martha Brinson</u>          Phone: <u>(202) 622-5200</u></p>

# EXHIBIT D

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## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8 (b) (3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8 (b) (3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify them below and explain the reason in Item 18 of the Supporting Statement.

Signature of Program Official <i>G. Shear</i> Garrick R. Shear, IRS Reports Clearance Officer	Date 8/15/96
Signature of Senior Official or designee <i>Joia K. Hallard</i> Departmental Reports Management Officer	Date AUG 16 1996

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## Supporting Statement for Form 1040

12. Burden Estimation (continued). We are asking for continued approval of these regulations that are associated with Form 1040. Please continue to assign OMB number 1545-0074 to these regulations:

1.23-5  
1.31.2  
1.37-2 and 3  
1.41-4  
1.41-4A  
1.43-2  
1.44A-3  
1.52-4  
1.61-15  
1.63-1  
1.64(c)6  
1.71-1  
1.72  
1.79-2 and 3  
1.83-2 thru 5  
1.105  
1.151-1  
1.152-4 and 4T  
1.162-24  
1.163-10T  
1.166-10  
1.170  
1.170A  
1.172  
1.180-2  
1.182-6  
1.190-3  
1.213-1  
1.215-1  
1.254-1  
1.265-1  
1.274-ST and 6T  
1.280A-3  
1.280F-3T  
1.302-4  
1.307-2  
1.333-1  
1.351-3  
1.383-1  
1.442-1  
1.446-1  
1.451-5 thru 7  
1.454-1  
1.461-1  
1.466-1  
1.551-4  
1.612-4  
1.642(c)-5 and 6

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## Supporting Statement for Form 1040

1.702-1  
1.706-1  
1.736-1  
1.743-1  
1.751-1  
1.852-7 and 9  
1.931-1  
1.935-1  
1.1012-1  
1.1041-1T  
1.1081-11  
1.1101-4  
1.1211-1  
1.1212-1  
1.1231-2  
1.1232-3  
1.1248-7  
1.1251-2  
1.1254-1 and 3  
1.1304-1 thru 5  
1.1311(a)-1  
1.1383-1  
1.1385-1  
1.1402(a)-2,5,11,15,  
1 6 1.1402(c)-2  
1.1402(e)-(2)-1  
1.1402(f)-1  
1.6001-1  
1.6060-1  
1.6072-1  
1.6107-1  
1.6109-1 and 2  
1.6011-1  
1.6012-1  
1.6013-1, 6, 7  
1.6017-1  
1.6060-1  
1.6072-1  
1.6107-1  
1.6109-1  
1.6151-1  
1.6695-1  
1.6696-1  
1.9100-1  
5c.0  
7.0  
16A.126-2  
18.1-7  
31.6011(a)-1 and 7  
301.6110-3 and 5  
301.6316-4 thru 6

EXHIBIT D

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### Issuance of Advisory Bulletin

**AGENCY:** Research and Special Programs Administration, (RSPA), DOT.

**ACTION:** Notice; issuance of advisory bulletin.

**SUMMARY:** We are issuing this advisory bulletin to owners and operators of Hazardous Liquid and Natural Gas Pipelines. The bulletin advises the industry about the potential for damage to pipeline facilities caused by the passage of Hurricane Georges.

**ADDRESSES:** This document can be viewed on our home page at: <http://ops.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Linda Daugherty, (202) 331-4577.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The purpose of this Notice is to advise all operators of natural gas and hazardous liquid pipelines located in offshore waters of the Gulf of Mexico of recurring safety problems that may be resulting from the passage of Hurricane Georges. Operators should be advised that we have received several reports of damage to pipeline facilities, particularly in the area bounded, East of the Mississippi River and West of Mobil Bay.

Several mudslides in this area may have exposed pipelines which could pose a safety threat to the crews of fishing vessels in shallow coastal waters and to other marine operations in shipping lanes and deeper offshore waters. Extensive onshore flooding may also have exposed or weakened facilities. We are working with the Minerals Management Service, the Coast Guard, and the Army Corps of Engineers to address the potential hazards of exposed or weakened pipeline facilities in areas affected by Hurricane Georges. This Notice reminds operators of offshore pipelines that may have been affected by flooding of Federal pipeline safety requirements. We are advising pipeline operators of similar problems that may occur in inland navigable waterways. Also, we are advising the commercial fishing industry of the potential of unburied offshore pipelines by sending this Notice to Louisiana Shrimp Association, Texas Shrimp Association, Southeastern Fisheries Association, National Fish Meal & Oil Association, and Concerned Shrimpers of America. Pipeline operators or mariners aware of any damage or

exposure to a portion of a submerged pipeline should report that information to the appropriate US Coast Guard District. The Coast Guard has issued a radio advisory to vessel operators operating in or near the mouth of the Mississippi and an advisory in its Notice to Mariners.

##### II. Advisory Bulletin (ADB-98-3)

**To:** Owners and Operators of Hazardous Liquid and Natural Gas Pipelines.

**Subject:** Recurring safety problems which may be resulting from the passage of Hurricane Georges.

**Purpose:** We are advising all operators of natural gas and hazardous liquid pipelines located in offshore waters and other areas that may have been impacted by flooding due to the passage of Hurricane Georges. The recent passage of Hurricane Georges and major storms may have contributed to the exposure or instability of pipelines in the vicinity of the Gulf of Mexico.

**Advisory:** On October 1, 1998, a 10-inch pipeline located in the Gulf of Mexico south of the Mississippi River, in an unstable mudslide area with a water depth of 108 feet, ruptured and released an estimated 3,700 barrels of crude oil. Other reported incidents include pipeline exposures and natural gas and hazardous liquid releases.

Our pipeline regulations require operators to patrol their lines periodically for the presence of unusual operating and maintenance conditions and to take corrective action if conditions are unsafe. Because this patrolling is generally done using aircraft, pipelines exposed or damaged on the seafloor can not be visually detected. It is likely that some pipelines located in the area of Hurricane Georges impact are exposed or damaged. It is important to note that if a pipeline operator has knowledge that its pipeline is exposed or otherwise presenting a danger to the public or the environment, 49 CFR sections 192.613 and 192.703 applicable to gas pipeline operators, and 49 CFR section 195.401 applicable to hazardous liquid pipeline operators would require the operator to take steps to mitigate the hazard. Additionally, 49 CFR sections 192.612(b) and 195.413(b) require that, if upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, it shall promptly notify the National Response Center (1-800-424-8802) with the geographic coordinates of that pipeline, mark the location of the pipeline in accordance with 64 CFR, and within six months of discovery, place the pipeline so that the top of the

pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

In view of the above, pipeline operators should consider taking the following actions regarding the natural gas and hazardous liquid pipelines located in areas impacted by Hurricane Georges.

1. Identify and caution persons who normally engage in commercial fishing, shrimping, and other marine vessel operations in shallow coastal waters where Hurricane Georges may have affected a pipeline. Submerged offshore pipelines may have become unprotected on the ocean floor. Marine vessels operating in water depths comparable to a vessel's draft or when operating bottom dragging equipment can be damaged and their crews endangered by an encounter with a submerged pipeline. The pipeline company's public education and damage prevention programs may be used to facilitate this notification process. Pipeline operators may want to consider a joint public education effort in areas of common concern.

2. Identify and caution marine vessel operators in offshore shipping lanes and other offshore areas where Hurricane Georges may have affected a pipeline that deploying fishing nets or anchors, and dredging operations may damage the pipeline, their vessels, and endanger their crews. The pipeline company's public education and damage prevention programs may be used to facilitate this notification process. Pipeline operators may want to consider a joint public education effort in areas of common concern.

3. Identify and correct any conditions on the pipeline that could violate pipeline safety requirements, and the terms and conditions of the pipeline's Corps of Engineers permit.

Issued in Washington, D.C. on November 5, 1998.

Richard B. Felder

Associate Administrator for Pipeline Safety.

[FR Doc. 98-30279 Filed 11-10-98; 8:45 am]

BILLING CODE 4910-28-P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 4, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the

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## Supporting Statement for Form 1040

301.6361-1 and 3  
301.6501  
301.6501(d)  
301.6905-1  
301.7216-2

The following are citations to 26 U.S.C.:

61  
72  
79  
83  
126  
162(h)  
170  
172(b), (c), (h)  
180  
182  
265  
301  
307  
317  
318  
331  
332  
351  
403  
454  
518(c)(18) 551  
613(g)  
642(c)  
735  
736  
852  
857  
1012  
1034(i)  
1037  
1081  
1101  
1232A  
6011  
6012  
6061  
6107  
7216

Property of Cook County Clerk's Office

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[Code of Federal Regulations]  
[Title 5, Volume 3, Parts 1200 to end]  
[Revised as of January 1, 2000]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 5CFR1320.1]

[Page 141]

## TITLE 5--ADMINISTRATIVE PERSONNEL

### CHAPTER III--OFFICE OF MANAGEMENT AND BUDGET

#### PART 1320--CONTROLLING PAPERWORK BURDENS ON THE PUBLIC--Table of Contents

##### Sec. 1320.8 Agency collection of information responsibilities.

[Page 150]

- (b) Such office shall ensure that each collection of information:
- (3) Informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of--
    - (i) The reasons the information is planned to be and/or has been collected;
    - (ii) The way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;
    - (iii) An estimate, to the extent practicable, of the average burden of the collection (together with 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);
    - (iv) Whether responses to the collection of information are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority);
    - (v) The nature and extent of confidentiality to be provided, if any (citing authority); and
    - (vi) 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.

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Standard Form 83  
(Rev. September 1983)

## Request for OMB Review

### Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs  
Office of Management and Budget  
Attention: Docket Library, Room 3201  
Washington, DC 20503

JUL 16 1985

### PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request Department of the Treasury Internal Revenue Service	2. Agency code 078 1 5 4 5
--	----------------------------------

3. Name of person who can best answer questions regarding this request Yolanda Texidor	Telephone number (202) 566-6150
---	------------------------------------

4. Title of information collection or rule making  
U.S. Individual Income Tax Return

5. Legal authority for information collection or rule (cite United States Code, Public Law, or Executive Order)  
26 USC 6011 & 6012 or see footnote 6.1 on Supporting Statement

6. Affected public (check all that apply)

1 <input checked="" type="checkbox"/> Individuals or households	3 <input type="checkbox"/> Farms	5 <input type="checkbox"/> Federal agencies or employees
2 <input type="checkbox"/> State or local governments	4 <input type="checkbox"/> Businesses or other for-profit	6 <input type="checkbox"/> Non-profit institutions
		7 <input type="checkbox"/> Small businesses or organizations

### PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)  
or, None assigned

8. Type of submission (check one in each category)	Stage of development	Type of review requested
Classification		
1 <input type="checkbox"/> Major	1 <input type="checkbox"/> Proposed or draft	1 <input type="checkbox"/> Standard
2 <input type="checkbox"/> Nonmajor	2 <input type="checkbox"/> Final or interim final, with prior proposal	2 <input checked="" type="checkbox"/> Pending
	3 <input type="checkbox"/> Final or interim final, without prior proposal	3 <input type="checkbox"/> Emergency
		4 <input type="checkbox"/> Arbitrary or judicial deadline

9. CFR section affected  
CFR

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320?  Yes  No

11. If a major rule, is there a regulatory impact analysis attached?  Yes  No  
If "No," did OMB waive the analysis?  Yes  No

### Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official	Date
-------------------------------	------

Signature of authorized regulatory contact	Date
--	------

12. (OMB use only)

EXHIBIT D

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**PART III.—Complete This Part Only if the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.**

**13. Abstract—**Describe needs, uses and affected public in 50 words or less. **This Form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistics use.**

**14. Type of information collection (check only one)**

Information collections not contained in rules

- 1  Regular submission      2  Emergency submission (certification attached)

Information collections contained in rules

- 3  Existing regulation (no change proposed)      6 Final or interim final without prior NPRM  
 4  Notice of proposed rulemaking (NPRM)      A  Regular submission  
 5  Final, NPRM was previously published      B  Emergency submission (certification attached)

7. Enter date of expected or actual Federal Register publication at this stage of rulemaking (month, day, year): \_\_\_\_\_

**15. Type of review requested (check only one)**

- 1  New collection      4  Reinstatement of a previously approved collection for which approval has expired  
 2  Revision of a currently approved collection      5  Existing collection in use without an OMB control number  
 3  Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

**16. Agency report form number(s) (if not the standard/optional form number(s))**  
 Form 1040 and related Schedules A, B, C, D, E, F, G, R, SE, & W.

**17. Annual reporting or disclosure burden**

1 Number of respondents	60,300,000
2 Number of responses per respondent	4
3 Total annual responses (line 1 times line 2)	188,544,128
4 Hours per response	4
5 Total hours (line 3 times line 4)	2(4,391,279

**18. Annual recordkeeping burden**

1 Number of recordkeepers	4
2 Annual hours per recordkeeper	4
3 Total recordkeeping hours (line 1 times line 2)	3,586,310
4 Recordkeeping retention period	yes

**19. Total annual burden**

1 Requested (line 17-5 plus line 18-3)	268,467,598
2 In current OMB inventory	254,639,168
3 Difference (line 1 less line 2)	13,828,430
4 Program change	-7199795
5 Adjustment	+21028225

**20. Current (most recent) OMB control number or comment number**  
 1545-0074

**21. Requested expiration date**  
 July 1988

**22. Purpose of information collection (check as many as apply)**

- 1  Application for benefits  
 2  Program evaluation  
 3  General purpose statistics  
 4  Regulatory or compliance  
 5  Program planning or management  
 6  Research  
 7  Audit

**23. Frequency of recordkeeping or reporting (check all that apply)**

- 1  Recordkeeping  
 Reporting  
 2  On occasion  
 3  Weekly  
 4  Monthly  
 5  Quarterly  
 6  Semi-annually  
 7  Annually  
 8  Biennially  
 9  Other (specify): \_\_\_\_\_

**24. Respondents' obligation to comply (check the strongest obligation that applies)**

- 1  Voluntary  
 2  Required to obtain or retain a benefit  
 3  Mandatory

**25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs?**  Yes  No

**26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents?**  Yes  No

**27. Regulatory authority for the information collection**  
 26 CFR 1.6011-1; 1.6012-1 or FR \_\_\_\_\_ or Other (specify): \_\_\_\_\_  
 thru 1.6012-1(a)(8)

**Paperwork Certification**

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official: G. Shear      Date: JUL 10 1985  
 Garrick R. Shear  
 IRS Reports Clearance Officer

Signature of agency head, the senior official or an authorized representative: Joe Maty for John P...      Date: 7/15/85

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## Recordkeeping

Regulation	Number of Recordkeepers	Annual Hours per Recordkeeper	Total Hours	Retention Period
1.167(k)-3(b)	100,000	0.083	8,300	3
1.170A-1(a)(2)(iii)				
&				
1.170-1(a)(3)(iii)	904,564	0.25	226,141	3
1.170A-2(a)(4)	72,500	0.083	6,018	3
1.213-1(h)	8,000,000	0.25	2,000,000	3
1.302-4(b)	79,056	0.25	19,764	3
1.307-2	40,000	0.10	4,000	3
1.1012-1	19,000,000	0.0167	317,300	5
1.1081-11(h)	41,500	0.10	4,150	30
1.1101-4	1,000	0.25	250	60
1.1232-3(f)	2,500,000	0.1	250,000	15
248-7(b)(4)(d)	10,000	1.0	10,000	3
1.6060-1	400,000	0.25	100,000	3
1.6107-1	50,000	12.00	600,000	3
301.6903-1(a)	12,300	0.20	2,300	3
301.7215-2(a)	50,000	0.083	4,150	3
1.104-11(c)	2,500	0.1224	306	3
1.104-11(e)	200	0.5	100	3
1.1254-1(b)(3)	200,000	0.1557	31,140	3
TOTAL			3,586,510	

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## Reporting

Regulation	Number of Respondents	Number of Respondents	Total Annual Responses	Hours per Response	Total Hours
1.61-15	150	1	150	0.3	45
1.83-2(b), (c), & (e)	100	1	100	0.3	30
1.83-5(b)	300	1	300	0.4	120
1.72-4	280	1	280	0.5	140
1.79-2	200	1	200	0.25	50
1.79-3	50	1	50	0.5	25
1.152-4	100,000	1	100,000	0.45	45,000
1.167(k)-4(a)	100,000	1	100,000	2.0	200,000
1.170-2(a)7	100,000	1	100,000	0.40	40,000
1.170A-2(a)(4)	72,500	1	72,500	0.417	30,233
1.170A-8(d)(2)(c)(iii)	60,000	1	60,000	0.25	15,000
1.170A-9(g)	236,280	1	236,280	0.25	81,570
1.72-11	300	1	300	0.5	150
1.180-2	1,300	1	1,300	0.5	650
1.182-6	1,200	1	1,200	0.5	600
1.265-1	400,000	1	400,000	0.5	200,000
1.307-2	40,000	1	40,000	0.25	10,000
1.331-1(d)	374,850	1	374,850	0.25	93,713
1.351-3(a)-(c)	68,711	1	68,711	0.5	34,356
1.442-1(e)	12,702	1	12,702	0.25	3,176
1.451-5(d)(e)	100,000	1	100,000	1.0	100,000
1.451-6(a) & (b)1	15,281	1	15,281	0.5	50
1.451-7(g) & (h)	1,000	1	1,000	0.25	250
1.454-1(a)	2,268,872	1	2,268,872	0.25	567,218
TOTAL					1,422,378

EXHIBIT D

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## Reporting

Regulation	Number of Respondents	Number of Responses	Total Annual Responses	Hours per Response	Total Hours
1.461-1(c)(3)(ii)	25,000	1	25,000	0.25	6,250
1.551-4	7,500	1	7,500	0.25	1,875
1.642(c)-6	2,950	1	2,950	0.5	1,475
1.736-1(b)	100,000	1	100,000	0.25	25,000
1.743-1(b)(3)	100,000	1	100,000	0.25	25,000
1.751-1(a)(3)	100,000	1	100,000	0.25	25,000
1.852-7	725	1	725	1.0	725
1.852-9(c)(1)	29,000	1	29,000	0.05	1,450
1.857-9	100	1	100	0.5	50
1.1081-11(a), (c), (f), & (h)	41,500	1	41,500	0.25	10,375
1.101-4	1,000	1	1,000	0.25	250
1.1248-7	10,000	1	10,000	2.0	20,000
1.6013-6(a)	27,729	1	27,729	0.25	6,932
1.6109-1(a)	50,000	700	35,000,000	0.03	1,050,000
5c.0	3,500	1	3,500	0.5	1,750
7.0	150,000	1	150,000	1.0	150,000
16A.126-2(b)	10,000	1	10,000	0.1	1,000
18.1-7	20,000	1	20,000	0.25	5,000
31.6011(a)-7(b)	300	1	300	0.2	60
301.6316-4(b)	1,500	1	1,500	0.3	450
301.6316-5(d)	1,500	1	1,500	0.15	225
301.6316-6(a)	600	1	600	0.25	150
301.6501(b) & (c)	2,500	1	2,500	0.3	750
1.1041-1r(c)	500			0.5	250
1.1041-1r(e)	2,500			0.3776	944
1.1041-1r(b)	500			0.5	250
1-1r(b)	5,000			0.5	2,500
1.215-1(r)	560,000			0.25	140,000
1.1254-1(b)	200,000			0.333	66,600

TOTAL

2,906,750

EXHIBIT D

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We are asking for continued approval for these regulations that are associated with Form 1040. There is no additional burden requirement on EM.

1.31-2(a)	1.72-17A(c)
1.37-1(c)	1.1211-1
1.37-3(b)	1.1212-1
1.41-4(b) & (c)	31.6011(a)-1(d)
1.43-2(b)	1.612-4(d)
1.44A-3(a)	1.6013-7(a)(b)
1.72-17(e)	1.167(k)-4(b)
1.151-1(d)	1.1304-3
1.190-3(a) & (c)	1.1304-5
1.213-1(d)	1.1383-1(b)
1.466-1	
1.642(c)-5(b)	
1.931-1(b)	
1.935-1	
1.1211-1	
1.1212-1	
1.1251-2(d)	
1.13-4-1, 2, 3, 4, 5	
1.1311(a)-1	
1.1383-1	
1.1385-1	
1.14-2(a)-2, 5, 11, 15, & 16	
1.1402(f)-1	
1.6012-1(a)	
1.6013-1(a)	
1.6013-1(b)	
1.6013-1(d)	
1.6017-1(a), (b), & (c)	
1.6151-1(a)	
1.6695-1	
31.6011(a)-1(d)	
1.612-4(d)	
1.702-1	
1.706-1(c)(3)(ii)	
1.6013-7(a) & (b)	
1.152-4(t)	

**EXHIBIT D**

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Standard Form **83**  
(Rev. September 1983)

## Request for OMB Review

**Important**

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and the paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs  
Office of Management and Budget  
Attention: Docket Library, Room 3201  
Washington, DC 20503

JUN 26 1986

**PART I.—Complete This Part for All Requests.**

<b>1. Department/agency and bureau/office originating request</b>  Department of the Treasury Internal Revenue Service	<b>2. Agency code</b>  1 5 4 5 - <span style="float: right;">0074</span>
<b>3. Name of person who can best answer questions regarding this request</b> Yolanda Texidor	<b>Telephone number</b> (202) 566-6150
<b>4. Title of information collection or rulemaking</b>  U.S. Individual Income Tax Return	

**5. Legal authority for information collection or rule (cite United States Code, Public Law, or Executive Order)**  
 26 USC 6011 & 6012 or see footnote No. 1 on Supporting Statement

**6. Affected public (check all that apply)**

<input checked="" type="checkbox"/> 1 Individuals or households	<input type="checkbox"/> 3 Farms	<input type="checkbox"/> 5 Federal agencies or employees
<input type="checkbox"/> 2 State or local governments	<input type="checkbox"/> 4 Businesses or other for-profit	<input type="checkbox"/> 6 Non-profit institutions
		<input type="checkbox"/> 7 Small businesses or organizations

**PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291**

**7. Regulation Identifier Number (RIN)**  
 \_\_\_\_\_ or None assigned

**8. Type of submission (check one in each category)**

Classification	Stage of development	Type of review requested
<input type="checkbox"/> 1 Major	<input type="checkbox"/> 1 Proposed or draft	<input type="checkbox"/> 1 Standard
<input type="checkbox"/> 2 Nonmajor	<input type="checkbox"/> 2 Final or interim final, with prior proposal	<input type="checkbox"/> 2 Funding
	<input type="checkbox"/> 3 Final or interim final, without prior proposal	<input type="checkbox"/> 3 Emergency
		<input type="checkbox"/> 4 Statutory or judicial deadline

**9. CFR section affected**  
 \_\_\_\_\_ CFR

**10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320?**  Yes  No

**11. If a major rule, is there a regulatory impact analysis attached?** 1  Yes 2  No  
 If "No," did OMB waive the analysis? 3  Yes 4  No

**Certification for Regulatory Submissions**  
 In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official	Date
Signature of authorized regulatory contact	Date

EXHIBIT D



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**PART III.—Complete This Part Only if the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.**

**13. Abstract—Describe needs, uses and affected public in 50 words or less.** **'Personal Income Taxes, Tax Returns'**  
 This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use.

**14. Type of information collection (check only one)**

Information collections not contained in rules

1  Regular submission

2  Emergency submission (certification attached)

Information collections contained in rules

3  Existing regulation (no change proposed)

6 Final or interim final without prior NPRM

7. Enter date of expected or actual Federal Register publication at this stage of rulemaking (month, day, year): \_\_\_\_\_

4  Notice of proposed rulemaking (NPRM)

A  Regular submission

5  Final, NPRM was previously published

B  Emergency submission (certification attached)

**15. Type of review requested (check only one)**

1  New collection

4  Reinstatement of a previously approved collection for which approval has expired

2  Revision of a currently approved collection

8  Existing collection in use without an OMB control number

3  Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

**16. Agency report form number(s) (include standard/optional form number(s))**  
 Form 1040 and related Schedules A, B, C, D, E, F, G, H, SE, & W.

**22. Purpose of information collection (check as many as apply)**

1  Application for benefits

2  Program evaluation

3  General purpose statistics

4  Regulatory or compliance

5  Program planning or management

6  Research

7  Audit

**17. Annual reporting or disclosure burden**

1 Number of respondents	66,827,810
2 Number of responses per respondent	*
3 Total annual responses (line 1 times line 2)	203,164,295
4 Hours per response	*
5 Total hours (line 3 times line 4)	287,453,195

**23. Frequency of recordkeeping or reporting (check all that apply)**

1  Recordkeeping

Reporting

2  On occasion

3  Weekly

4  Monthly

5  Quarterly

6  Semi-annually

7  Annually

8  Biennially

9  Other (describe): \_\_\_\_\_

**18. Annual recordkeeping burden**

1 Number of recordkeepers	*
2 Annual hours per recordkeeper	*
3 Total recordkeeping hours (line 1 times line 2)	3,586,319
4 Recordkeeping retention period	* years

**19. Total annual burden**

1 Requested (line 17-5 plus line 18-3)	291,040,114
2 In current OMB inventory	268,735,198
3 Difference (line 1 less line 2)	22,304,916
Explanation of difference	
4 Program change	-762,100
5 Adjustment	23,067,016

**20. Current (most recent) OMB control number or comment number**

1545-0074

**24. Respondents' obligation to comply (check the strongest obligation that applies)**

1  Voluntary

2  Required to obtain or retain a benefit

3  Mandatory

**21. Requested expiration date**

8/30/89

**25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs?**  Yes  No

**26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents?**  Yes  No

**27. Regulatory authority for the information collection**

26 CFR 1.6011-1; 1.6012-1 ; or \_\_\_\_\_ FR \_\_\_\_\_ ; or, Other (specify): \_\_\_\_\_  
 thru 1.6012-1(a)(8)

**Paperwork Certification**

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320.1 Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official

Garrick R. Shear  
 IRS Reports Clearance Officer

*G. Shear*

JUN 18 1986

Signature of agency head, the senior official or an authorized representative

*McColley* Douglas Colley  
 Dept. Clearance Officer

Date  
 6/23/86

EXHIBIT D

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## Recordkeeping

Regulation	Number of Recordkeepers	Annual Hours per Recordkeeper	Total Hours	Retention Period
L.167(k)-3(b)	100,000	0.083	8,300	3
L.170A-1(a)(2)(iii)				
&				
L.170-1(a)(3)(iii)	904,564	0.25	226,141	3
L.170A-2(a)(4)	72,500	0.083	6,018	3
L.213-1(h)	8,000,000	0.25	2,000,000	3
L.302-4(b)	79,056	0.25	19,764	3
L.307-2	40,000	0.10	4,000	3
L.1012-1	19,000,000	0.0167	317,300	5
L.1081-11(h)	41,500	0.10	4,150	30
L.1101-4	1,000	0.25	250	60
L.1132-3(f)	2,500,000	0.1	250,000	15
L.1248-7(b)(4)(d)	10,000	1.0	10,000	3
L.6060-1	400,000	0.25	100,000	3
L.6107-1	50,000	12.00	600,000	3
301.6905-1(a)	12,500	0.20	2,500	3
301.7215-2(H)	50,000	0.083	4,150	3
L.104-II()	2,500	0.124	789	3
L.104-III()	200	0.5	100	3
L.1254-1(b)(3)	200,000	0.1567	31,340	3
TOTAL			3,586,319	

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## Reporting

Regulation	Number of Respondents	Number of Respondents	Total Annual Responses	Hours per Response	Total Hours
L.61-15	150	1	150	0.3	45
L.83-2(b), (c), & (e)	100	1	100	0.3	30
L.83-5(b)	300	1	300	0.4	120
L.72-4	280	1	280	0.5	140
L.79-2	200	1	200	0.25	50
L.79-3	50	1	50	0.5	25
L.152-4	100,000	1	100,000	0.45	45,000
L.167(k)-4(a)	100,000	1	100,000	2.0	200,000
L.170-2(a)7	100,000	1	100,000	0.40	40,000
L.170A-2(a)(4)	72,500	1	72,500	0.417	30,233
L.170A-8(d)(2)(c)(iii)	60,000	1	60,000	0.25	15,000
L.170A-9(g)	236,280	1	236,280	0.25	81,570
L.172-11	300	1	300	0.5	150
L.180-2	1,300	1	1,300	0.5	650
L.182-6	1,200	1	1,200	0.5	600
L.265-1	400,000	1	400,000	0.5	200,000
L.307-2	20,000	1	20,000	0.25	10,000
L.331-1(a)	374,850	1	374,850	0.25	93,712
L.351-3(a)-(c)	68,711	1	68,711	0.5	34,355
L.442-1(e)	12,702	1	12,702	0.25	3,175
L.451-5(d)(e)	100,000	1	100,000	1.0	100,000
L.451-6(a) & (b)1	15,281	1	15,281	0.5	7,640
L.451-7(g) & (h)	1,000	1	1,000	0.25	250
L.454-1(a)	2,268,872	1	2,268,872	0.25	567,218
TOTAL					1,422,378

EXHIBIT D

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## Reporting

Regulation	Number of Respondents	Number of Responses	Total Annual Responses	Hours per Response	Total Hours
1.461-1(c)(3)(ii)	25,000	1	25,000	0.25	6,250
1.551-4	7,500	1	7,500	0.25	1,875
1.642(c)-6	2,950	1	2,950	0.5	1,475
1.736-1(b)	100,000	1	100,000	0.25	25,000
1.743-1(b)(3)	100,000	1	100,000	0.25	25,000
1.751-1(a)(3)	100,000	1	100,000	0.25	25,000
1.852-7	725	1	725	1.0	725
1.852-9(c)(1)	29,000	1	29,000	0.05	1,450
1.857-9	100	1	100	0.5	50
1.1081-11(a), (c), (f), & (h)	41,500	1	41,500	0.25	10,375
1.1101-4	1,000	1	1,000	0.25	250
1.1248-7	10,000	1	10,000	2.0	20,000
1.6013-6(a)	27,729	1	27,729	0.25	6,932
1.6109-1(a)	50,000	700	35,000,000	0.03	1,050,000
5c.0	3,500	1	3,500	0.5	1,750
7.0	150,000	1	150,000	1.0	150,000
16A.126-2(b)	10,000	1	10,000	0.1	1,000
18.1-7	20,000	1	20,000	0.25	5,000
31.6011(a)-7(b)	300	1	300	0.2	60
301.6316-4(b)	1,500	1	1,500	0.3	450
301.6316-5(d)	1,500	1	1,500	0.15	225
301.6316-6(a)	600	1	600	0.25	150
301.6501(b) & (c)	2,500	1	2,500	0.3	750
1.1041-1 + (c)	500			.5	250
1.1041-1 + (g)	2500			.3776	944
1.1041-1 + (b)	500			.5	250
1.71-1 + (b)	5000			.5	2500
1.215-1 (T)	50000			.25	14000
1.254-1 (b)	200000			.0333	6669
					290675

EXHIBIT D

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We are asking for continual approval for these regulations that are associated with Form 1040. There is no additional burden requirement on

1.31-2(a)  
 1.37-1(c)  
 1.37-3(b)  
 1.41-4(b) & (c)  
 1.43-2(b)  
 1.44A-3(a)  
 1.72-17(e)  
 1.151-1(d)  
 1.190-3(a) & (c)  
 1.213-1(d)  
 1.466-1  
 1.642(c)-5(b)  
 1.931-1(b)  
 1.935-1  
 1.1211-1  
 1.1212-1  
 1.1251-2(d)  
 1.13-4-1, 2, 3, 4, 5  
 1.1311(a)-1  
 1.1383-1  
 1.1385-1  
 1.14-2(a)-2, 5, 11, 15, & 16  
 1.1402(f)-1  
 1.6012-1(a)  
 1.6013-1(a)  
 1.6013-1(b)  
 1.6013-1(d)  
 1.6017-1(a), (b), & (c)  
 1.6151-1(a)  
 1.6695-1  
 31.6011(a)-1(d)  
 1.612-4(d)  
 1.702-1  
 1.706-1(c)(3)(ii)  
 1.6013-7(a) & (b)  
 1.152-4(t)

1.72-17A(c)  
 1.1211-1  
 1.1212-1  
 31.6011(a)-1(d)  
 1.612-4(d)  
 1.6013-7(a)(b)  
 1.167(k)-4(b)  
 1.1304-3  
 1.1304-5  
 1.1383-1(b)

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## § 1.6091-1

(2) Be filed on or before the date prescribed for filing the REMIC income tax return with the Internal Revenue Service office designated in the application's instructions; and

(3) Show the full amount properly estimated as tax for the REMIC for the taxable year.

(c) *Effect of extension on residual or regular interest holders.* An automatic extension of time to file a REMIC income tax return under this section will not operate to extend the time for filing the income tax return of a residual or regular interest holder of the REMIC or the time for the payment of any tax due on the residual or regular interest holder's income tax return.

(d) *Termination of automatic extension.* The district director, including the Assistant Commissioner (International), or the director of a service center may terminate at any time an automatic extension by mailing to the REMIC a notice of termination. The notice must be mailed at least 10 days prior to the termination date designated in such notice. The notice of termination must be mailed to the address shown on Form 8736 or to the REMIC's last known address. For further guidance regarding the definition of last known address, see § 301.6212-2 of this chapter.

(e) *Penalties.* See sections 6698 and 6651 for failure to file a REMIC income tax return or failure to pay the amount shown as tax on the return.

(f) *Coordination with § 1.6081-1.* Except in undue hardship cases, no extension of time for filing a REMIC income tax return will be granted under § 1.6081-1 until an automatic extension has been allowed pursuant to the provisions of this section.

(g) *Effective date.* This section is effective for applications for an automatic extension of time to file a REMIC income tax return filed on or after December 31, 1996.

[T.D. 8703, 61 FR 69030, Dec. 31, 1996, as amended by T.D. 8939, 66 FR 2819, Jan. 12, 2001]

## 26 CFR Ch. I (4-1-03 Edition)

### PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

#### § 1.6091-1 Place for filing returns or other documents.

(a) *In general.* Except as provided in § 1.6091-4, whenever a return, statement, or other document is required to be made under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code, and the place for filing such return, statement, or other document is not provided for by the Code, it shall be filed at the place prescribed by the regulations contained in this chapter.

(b) *Place for filing certain information returns.* (1) For the place for filing returns of partnership income, see paragraph (e)(1) of § 1.6031-1.

(2) For the place for filing information returns by banks with respect to common trust funds, see § 1.6032-1.

(3) For the place for filing information returns by certain organizations exempt from taxation under section 501(a), see paragraph (e) of § 1.6033-1.

(4) For the place for filing information returns by trusts claiming charitable deductions under section 642(c), see paragraph (c) of § 1.6034-1.

(5) For the place for filing information returns by officers, directors, and shareholders of foreign personal holding companies, see paragraph (d) of § 1.6035-1 and paragraph (d) of § 1.6035-2.

(6) For the place for filing information returns relating to certain stock option transactions, see paragraph (c) of § 1.6039-1.

(7) For the place for filing returns of information reporting certain payments, see paragraph (a)(5) of § 1.6041-2 and § 1.6041-6.

(8) For the place for filing returns of information regarding payments of dividends, see paragraph (d) of § 1.6042-1 and paragraph (c) of § 1.6042-2 (relating to returns for calendar years after 1962).

(9) For the place for filing information returns by corporations relating to contemplated dissolution or liquidation, see paragraph (a) of § 1.6043-1.

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## Internal Revenue Service, Treasury

## § 1.6091-2

(10) For the place for filing information returns by corporations relating to distributions in liquidation, see paragraph (a) of § 1.6043-2.

(11) For the place for filing returns of information regarding payments of patronage dividends, see paragraph (b) of § 1.6044-1, and paragraph (d) of § 1.6044-2 (relating to returns for calendar years after 1962).

(12) For the place for filing information returns relating to formation or reorganization of foreign corporations, see paragraph (e) of § 1.6046-1.

(13) For the place for filing information returns regarding certain payments of interest, see paragraph (c) of § 1.6049-1.

(14) For the place for filing information returns with respect to payment of wages in the form of group-term life insurance, see paragraph (b) of § 1.6052-1.

(15) For the place for filing information returns on Forms 1042-S with respect to certain amounts paid to foreign persons, see instructions to the form.

(16) For the place for filing information returns on Form 5074 with respect to the allocation of individual income tax to Guam, see paragraph (b)(3) of § 1.935-1 and paragraph (d) of § 301.7654-1 of this chapter (Regulations on Procedure and Administration).

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6887, 31 FR 8814, June 24, 1966; T.D. 6922, 32 FR 8713, June 17, 1967; T.D. 7284, 36 FR 20829, Aug. 3, 1973; T.D. 7385, 40 FR 50264, Oct. 29, 1975; T.D. 8734, 62 FR 53493, Oct. 14, 1997]

**§ 1.6091-2 Place for filing income tax returns.**

Except as provided in § 1.6091-3 (relating to income tax returns required to be filed with the Director of International Operations) and § 1.6091-4 (relating to exceptional cases):

(a) *Individuals, estates, and trusts.* (1) Except as provided in paragraph (c) of this section, income tax returns of individuals, estates, and trusts shall be filed with the district director for the internal revenue district in which is located the legal residence or principal place of business of the person required to make the return, or, if such person has no legal residence or principal

place of business in any internal revenue district, with the District Director at Baltimore, Md. 21202.

(2) An individual employed on a salary or commission basis who is not also engaged in conducting a commercial or professional enterprise for profit on his own account does not have a "principal place of business" within the meaning of this section.

(b) *Corporations.* Except as provided in paragraph (c) of this section, income tax returns of corporations shall be filed with the district director for the internal revenue district in which is located the principal place of business or principal office or agency of the corporation.

(c) *Returns filed with service centers.* Notwithstanding paragraphs (a) and (b) of this section, whenever instructions applicable to income tax returns provide that the returns be filed with a service center, the returns must be so filed in accordance with the instructions.

(d) *Hand-carried returns.* Notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (c) of this section:

(1) *Persons other than corporations.* Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone or local office constituting a permanent post of duty within the internal revenue district of such director) as provided in paragraph (a) of this section.

(2) *Corporations.* Returns of corporations which are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone or local office constituting a permanent post of duty within the internal revenue district of such director) as provided in paragraph (b) of this section.

See § 301.6091-1 of this chapter (Regulations on Procedure and Administration) for provisions relating to the definition of hand carried.

(e) *Amended returns.* In the case of amended returns filed after April 14, 1968, except as provided in paragraph (d) of this section:

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## §1.6102-1

wishes to apply for an extension of the period of replacement for involuntarily converted property pursuant to section 1033 of the Code. Under paragraph (c)(3) of §1.1033(a)-2 of this chapter such application is to be made to the district director for the internal revenue district in which the income tax return is filed for the first taxable year during which any of the gain from the involuntary conversion is realized. Pursuant to subparagraph (2) of this paragraph, B shall apply to the district director for the internal revenue district in which such income tax return is, without regard to subparagraph (2) of this paragraph, required to be filed. Such district director is authorized to grant or withhold such extension of the period of replacement.

*Example (5).* Taxpayer C sends his return directly to the director of a service center. C wishes to receive certain information concerning the value of a reversionary interest with respect to his charitable contribution under section 170 of the Code. Under paragraph (d)(2) of §1.170-2 of this Chapter, C may upon request, obtain the information from the district director with whom he files his income tax return. Under subparagraph (3) of this paragraph, C shall request such information from the district director with whom he would, without regard to subparagraph (2) of this paragraph, be required to file his return.

(b) *Returns of officers and employees of the Internal Revenue Service.* The Commissioner may require any officer or employee of the Internal Revenue Service to file his income tax return in any district selected by the Commissioner.

(c) *Residents of Guam.* Income tax returns of an individual citizen of the United States who is a resident of Guam shall be filed with Guam, as provided in paragraph (b)(1) of §1.935-1.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6793, 30 FR 704, Jan. 22, 1965; T.D. 7385, 40 FR 50264, Oct. 29, 1975]

### MISCELLANEOUS PROVISIONS

#### §1.6102-1 Computations on returns or other documents.

For provisions with respect to the rounding off to whole-dollar amounts of money items on returns and accompanying schedules, see §301.6102-1 of this chapter (Regulations on Procedure and Administration).

[T.D. 6500, 25 FR 12137, Nov. 26, 1960]

## 26 CFR Ch. I (4-1-03 Edition)

#### §1.6107-1 Income tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *Furnishing copy to taxpayer.* The person who is an income tax return preparer of any return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 shall furnish a completed copy of the original return or claim for refund to the taxpayer (or nontaxable entity) not later than the time the original return or claim for refund is presented for the signature of the taxpayer (or nontaxable entity). The preparer may, if it wishes request a receipt or other evidence from the taxpayer (or nontaxable entity) sufficient to show satisfaction of the requirement of this paragraph (a).

(b) *Copy or record to be retained.* The person who is an income tax return preparer of any return or claim for refund shall:

(1)(i) Retain a completed copy of the return or claim for refund; or

(ii) Retain a record, by list, card file, or otherwise of the name, taxpayer identification number, and taxable year of the taxpayer (or nontaxable entity) for whom the return or claim for refund was prepared and the type of return of claim for refund prepared;

(2) Retain a record by retention of a copy of the return or claim for refund, maintenance of a list or card file, or otherwise, for each return or claim for refund presented to the taxpayer (or nontaxable entity) of the name of the individual preparer required to sign the return or claim for refund pursuant to §1.6695-1(b); and

(3) Make the copy or record of returns and claims for refund and record of the individuals required to sign available for inspection upon request by the district director.

The material described in this paragraph (b) shall be retained and kept available for inspection for the 3-year period following the close of the return period during which the return or claim for refund was presented for signature to the taxpayer (or nontaxable entity). However, in the case of a return which becomes due (with extensions, if any) during a return period



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EXHIBIT E

(1) Income tax returns of corporations which claim the benefits of section 941 (relating to the special deduction for China Trade Act corporations). [T.D. 6950, 33 FR 5357, Apr. 4, 1968, as amended by T.D. 7012, 34 FR 7890, May 15, 1969; T.D. 7670, 45 FR 6931, Jan. 31, 1980]

**§ 1.6091-4 Exceptional cases.**

(a) *Permission to file in district other than required district.* (1) The Commissioner may permit the filing of any income tax return required to be made under the provisions of subtitle A or F of the Code, or the regulations in this part, in any Internal Revenue district, notwithstanding the provisions of paragraphs (1) and (2) of section 6091(b) and § 1.6091-1 to 1.6091-3, inclusive.

(2) In cases where the Commissioner authorizes (for all purposes except venue) a director of an Internal Revenue service center to receive returns, such returns pursuant to instructions issued with respect thereto, may be sent directly to the director and are thereby filed with him for all purposes except as a factor in determining venue. However, after initial processing all such returns shall be forwarded by the director of a service center to the office with which such returns are, without regard to this subparagraph, required to be filed. For the sole purpose of determining venue, such returns are filed only with such office.

(3) Notwithstanding the provisions of other sections of this chapter or any rule issued under this chapter:

(i) In cases where, in accordance with subparagraph (2) of this paragraph, a return is filed with the director of a service center, the authority of the director with whom such return would, without regard to such subparagraph, be required to be filed shall remain the same as if the return had been so filed;

(ii) Unless a return or other document is a proper attachment to, or is, a return which the director of a service center is expressly authorized to receive, such return or other document shall be filed as if all returns sent directly to the service centers, in accordance with subparagraph (2) of this paragraph, were filed in the office where such returns are, without regard to such subparagraph, required to be filed.

(iii) Unless the performance of an act is directly related to the sending of a return directly to the director of a service center, such act shall be performed as if all returns sent directly to the service centers, in accordance with subparagraph (2) of this paragraph, were filed in the office where such returns are, without regard to such subparagraph, required to be filed.

(4) The application of subparagraphs (2) and (3) of this paragraph may be illustrated by the following examples:

*Example (1).* The Commissioner has authorized the Director, Internal Revenue Service Center, Chamber, Georgia (for all purposes except venue), to receive Forms 1040 and 1040A, A, a resident of Greensboro, North Carolina, is required to file his Form 1040 for the calendar year 1964 with the District Director, Greensboro, North Carolina. In addition, A is required to file his declaration of estimated tax, Form 1040ES, for the calendar year 1965, which under paragraph (c) of § 1.6073-1 must be filed with the district director for the district in which A expects to file his income tax return. Under subparagraph (2) of this paragraph A may send his Form 1040 to either the director of the service center or to his district director. However, since the Form 1040ES is not a proper attachment to his income tax return, he shall send his Form 1040ES to his district director (with whom he is, without regard to subparagraph (2) of this paragraph, required to file his income tax return).

*Example (2).* Assume the same facts as in Example (1), and in addition, that A is required to attach copies of his Forms W-2 to his income tax return, Form 1040. Therefore, A must attach copies of his Forms W-2 to his Form 1040 and send both to either his district director or the director of the service center.

*Example (3).* Assume the facts in Example (1) and in addition, that A sends his Form 1040 to the director of the service center. Assume further that A is entitled to file a claim under section 6421 for refund of certain taxes paid for gasoline used for certain non-highway uses. Under paragraph (c) of § 1.6421(c)-1 of this chapter the claim on Form 843 shall be filed with the district director with whom the claimant filed his latest income tax return. Since Form 843 is not a proper attachment to A's Form 1040, the claim shall be sent to A's district director since this is the office with which A would, without regard to subparagraph (2) of this paragraph, be required to file his Form 1040. Taxpayer B sends his Form 1040 to the director of a service center.

§ 1.6091-4

Internal Revenue Service, Treasury

## UNOFFICIAL COPY

## § 1.6091-3

## 26 CFR Ch. I (4-1-03 Edition)

(1) *Persons other than corporations.* Amended returns of persons other than corporations shall be filed with the service center serving the internal revenue district referred to in paragraph (a) of this section.

(2) *Corporations.* Amended returns of corporations shall be filed with the service center serving the internal revenue district referred to in paragraph (b) of this section.

(f) *Returns of persons subject to a termination assessment.* Notwithstanding paragraph (c) of this section:

(1) *Persons other than corporations.* Returns of persons other than corporations with respect to whom an assessment was made under section 6851(a) with respect to the taxable year shall be filed with the district director as provided in paragraph (a) of this section.

(2) *Corporations.* Returns of corporations with respect to whom an assessment was made under section 6851(a) with respect to the taxable year shall be filed with the district director as provided in paragraph (b) of this section.

(g) *Returns of persons subject to a termination assessment.* Notwithstanding paragraph (c) of this section, income tax returns of persons with respect to whom an income tax assessment was made under section 6852(a) with respect to the taxable year must be filed with the district director as provided in paragraphs (a) and (b) of this section.

[T.D. 6950, 33 FR 5356, Apr. 4, 1968, as amended by T.D. 7012, 34 FR 7690, May 15, 1969; T.D. 7495, 42 FR 33726, July 1, 1977; T.D. 7575, 43 FR 58816, Dec. 18, 1978; T.D. 8628, 60 FR 62210, Dec. 5, 1995]

**§ 1.6091-3 Income tax returns required to be filed with Director of International Operations.**

The following income tax returns shall be filed with the Director of International Operations, Internal Revenue Service, Washington, DC 20225, or the district director, or the director of the service center, depending on the appropriate officer designated on the return form or in the instructions issued with respect to such form:

(a) Income tax returns on which all, or a portion, of the tax is to be paid in foreign currency. See §§ 301.6316-1 to

301.6316-6 inclusive, and §§ 301.6316-8 and 301.6316-9 of this chapter (Regulations on Procedure and Administration).

(b) Income tax returns on an individual citizen of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States. A taxpayer's principal place of abode will be considered to be outside the United States if his legal residence is outside the United States or if his return bears a foreign address.

(c) Income tax returns of an individual citizen of a possession of the United States (whether or not a citizen of the United States) who has no legal residence or principal place of business in any internal revenue district in the United States.

(d) Except in the case of any departing alien return under section 6851 and § 1.6851-2, the income tax return of any nonresident alien (other than one treated as a resident under section 6013(g) or (h)).

(e) The income tax return of an estate or trust the fiduciary of which is outside the United States and has no legal residence or principal place of business in any internal revenue district in the United States.

(f) Income tax returns of foreign corporations.

(g) The return by a withholding agent of the income tax required to be withheld at source under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, as provided in § 1.1461-2.

(h) Income tax returns of persons who claim the benefits of section 911 (relating to earned income from sources without the United States).

(i) Income tax returns of corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations) except in the case of consolidated returns filed pursuant to the regulations under section 1502.

(j) Income tax returns of persons who claim the benefits of section 931 (relating to income from sources within possessions of the United States).

(k) Income tax returns of persons who claim the benefits of section 933 (relating to income from sources within Puerto Rico).

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before December 14, 1998 to be assured of consideration.

**Internal Revenue Service (IRS)**  
 ✓ **OMB Number:** 1545-0074.  
**Form Number:** IRS Form 1040 and Schedules A, B, C, C-EZ, D, D-1, E, EIC, F, H, J, R, and SE.  
**Type of Review:** Revision.  
**Title:** U.S. Individual Income Tax Return.  
**Description:** These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are

correct, and also for general statistical use.

**Respondents:** Individuals or households.

**Estimated Number of Respondents/Recordkeepers:** 71,877,464.

**Estimated Burden Hours Per Respondent/Recordkeeper:**

Form/schedule	Recordkeeping	Learning about the law of the form	Preparing the form	Copying, assembling, and sending the form to the IRS	Totals
Form 1040	3 hr., 34 min	2 hr., 13 min	4 hr., 30 min	7 min	10 hr., 57 min.
Schedule A	2 hr., 32 min	26 min	1 hr., 10 min	27 min	4 hr., 35 min.
Schedule B	33 min	8 min	11 min	20 min	1 hr., 12 min.
Schedule C	6 hr., 26 min	1 hr., 11 min	2 hr., 6 min	35 min	10 hr., 18 min.
Schedule C-EZ	6 min	4 min	34 min	20 min	1 hr., 4 min.
Schedule D	1 hr., 11 min	2 hr., 7 min	2 hr., 39 min	1 hr., 3 min	4 hr., 10 min.
Schedule D-1	13 min	1 min	11 min	35 min	1 hr., 0 min.
Schedule E	2 hr., 57 min	1 hr., 7 min	1 hr., 16 min	35 min	5 hr., 10 min.
Schedule EIC		2 min	5 min	20 min	27 min.
Schedule F:					
Cash Method	4 hr., 2 min	36 min	1 hr., 14 min	20 min	6 hr., 12 min.
Accrual Method	4 hr., 22 min	25 min	1 hr., 19 min	20 min	6 hr., 26 min.
Schedule H	46 min	37 min	48 min	35 min	1 hr., 35 min.
Schedule J	20 min	8 min	1 hr., 8 min	41 min	2 hr., 17 min.
Schedule R	20 min	15 min	22 min	35 min	1 hr., 32 min.
Schedule SE:					
Short	20 min	13 min	11 min	14 min	58 min.
Long	26 min	22 min	34 min	20 min	1 hr., 2 min.

**Frequency of Response:** Annually.  
**Estimated Total Reporting/Recordkeeping Burden:** 1,211,582,312 hours.

**Clearance Officer:** Garrick Shear, (202) 622-3889, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

**OMB Reviewer:** Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

**Departmental Reports Management Officer.**  
 (FR Doc. 98-30183 Filed 11-10-98; 8:45 am)  
 BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Agency Information Collection Activities: Discontinuance

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve

System (Board); and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Discontinuance of information collection.

**SUMMARY:** Notice is hereby given of the discontinuance by the OCC, the Board, and the FDIC (the "agencies") of an information collection, the "Monthly Consolidated Foreign Currency Report of Banks in the United States" (FFIEC 035). Banks will no longer be required to complete this report after the December 31, 1998 report date.

**DATES:** The final date as of which the FFIEC 035 will be collected is December 31, 1998.

### FOR FURTHER INFORMATION CONTACT:

Additional information may be requested from any of the agency clearance officers or the Office of Management and Budget (OMB) Desk Officer whose names appear below.

**OCC:** Jessie Gates, OCC Clearance Officer, or Camille Dixon, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

**Board:** Mary M. McLaughlin, Chief, Financial Reports Section, (202) 452-3829, Division of Research and Statistics, Board of Governors of the

Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

**FDIC:** Steven F. Hanft, FDIC Clearance Officer, (202) 898-3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

**OMB:** Alexander T. Hunt, OMB Desk Officer, (202) 395-7860, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

### SUPPLEMENTARY INFORMATION:

**Discontinuance of the Following Report**

**Title:** Monthly Consolidated Foreign Currency Report of Banks in the United States.

**Form number:** FFIEC 035.

**Frequency of Response:** Monthly.

**Affected Public:** Businesses or other for-profit.

**For OCC:**

• **OMB Number:** 1557-0156.

**Estimated Number of Respondents:** 29.

**Estimated Average Hours per Response:** 12.68 burden hours.

EXHIBIT D

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## The Legislative History of the Paperwork Reduction Acts.

President Roosevelt commissioned the Central Statistical Board to study the problem of governmental paperwork on May 16, 1938,<sup>1</sup> and the Board's study thereafter became the basis for the Federal Reports Act of 1942 ("FRA"),<sup>2</sup> which constituted the first attempt by Congress to regulate the information collection activities of federal agencies. The FRA granted authority to the Bureau of the Budget to approve the requests of federal agencies seeking to collect information,<sup>3</sup> and it prohibited any federal agency from engaging in such conduct if the Director did not approve the proposed collection of information.<sup>4</sup> The act granted the rule making authority necessary for its implementation,<sup>5</sup> and on February 13, 1943, such rules were promulgated.<sup>6</sup> These rules clearly encompassed both forms used by federal agencies to collect information as well as agency regulations.

A weak attempt to strengthen the FRA was made in 1973,<sup>7</sup> and revisions to Circular No. A-40 which implemented the FRA were made on May 3, 1973, again on February 10, 1976, and finally on November 5, 1976. In late 1974, Congress established a Commission on Federal Paperwork and directed it to study and report needed changes in the laws, regulations and procedures which would insure that information essential for the functioning of federal agencies was obtained with a minimal amount of burden, duplication and cost.<sup>8</sup>

<sup>1</sup> Senate Rep. No. 479, 77th Cong., 1<sup>st</sup> Sess. (1941). The Central Statistical Board later became a part of the Bureau of the Budget, whose name was eventually changed to the Office of Management and Budget ("OMB").

<sup>2</sup> P.L. 77-831, 56 Stat. 1078 (1942), codified at 44 U.S.C. §3501, et seq. (1981).

<sup>3</sup> 44 U.S.C. §3509 (1976).

<sup>4</sup> 44 U.S.C. §§ 3506, 3509(2) (1976).

<sup>5</sup> 44 U.S.C. §510 (1976).

<sup>6</sup> Circular No. A-40, having application solely to federal agencies, was never published in the Federal Register. These regulations and subsequent amendments were effective until March 31, 1983, when regulations for the PRA were adopted.

<sup>7</sup> See P.L. 93-153, 87 Stat. 576, §409 (1973).

<sup>8</sup> See P.L. 93-556, 88 Stat. 1789 (1974), codified at 44 U.S.C. §3501 (1982).

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On October 3, 1977, after lengthy and careful study of the matter of paperwork requirements mandated by federal agencies, the Federal Paperwork Commission submitted the last of its many reports.<sup>9</sup> This Report concluded that while the existing FRA seemed sufficient to control the use of forms by federal agencies to collect information, it was insufficient to control the source for the use of such forms, i.e., agency regulations.<sup>10</sup> Prior to this report, it had been suggested that Congress clarify and strengthen the FRA "to allow the clearance agency to challenge the need for regulatory information."<sup>11</sup> The Commission readily perceived that changing the rule making process of federal agencies was essential to reduce paperwork burdens:

"Rulemaking is, in essence, legislation by executive departments and agencies. Agency rules and regulations have the full force and effect of law, and translate broad congressional mandates into operational programs and practices.

"Most of the specific reporting and recordkeeping requirements imposed on the public stem from such rules and regulations."<sup>12</sup>

Still later, another report concluded as follows:

"The Act is not clear on its coverage of a major portion of the paperwork burden — recordkeeping requirements — although recordkeeping is covered in OMB Circular A-40, the primary guideline instruction, as well as other OMB and GAO guidelines... Not all agencies covered by the Federal Reports Act comply fully with its requirements.

"For years, several of the regulatory agencies, particularly the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC) held themselves exempt, not always with success, from the reports clearance control of the Bureau of the Budget. The FTC took the position that its law

<sup>9</sup> A Report of the Commission on Federal Paperwork, Final Summary Report (Oct. 3, 1977).

<sup>10</sup> Id., at 606.

<sup>11</sup> Report of the Comptroller General, "Status of GAO's Responsibilities Under the Federal Reports Act," May 28, 1976, at 20.

<sup>12</sup> Final Report, at 613.

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enforcement responsibilities, mandated by the Congress, required the collection of information from business entities and industries which was for it alone to determine."<sup>13</sup>

While legislation was proposed in 1976 to address the problem of federal paperwork burdens, it was not until 1979 that a major effort was undertaken in this respect. In hearings upon a paperwork reduction bill introduced in the Senate, Senator Lawton Chiles stated:

"While OMB is required to supervise the approval or disapproval of agency requests within 60 days, individuals, businesses, and State and local governments will be told they do not need to answer requests not acted upon by OMB.

"Forms without an OMB number on them will be 'bootleg forms' that the public can ignore."<sup>14</sup>

While Senator Chiles stated the purpose of this proposed legislation, Senator Lloyd Bentson explained some of the problems the legislation was designed to address:

"Each of these reporting requirements, all of which have been approved by either OMB or GAO under the provisions of the Federal Reports Act, creates an average of ten separate forms -- and the staff at the GAO reported finding one OMB-approved reporting requirement that actually created 90 separate forms."<sup>15</sup>

Senator Bentson's sentiments in this respect were echoed by Gerald L. Hegel, of the Association of Records Managers and Administrators:

"The Federal Paperwork Commission addressed the issue of statutory recordkeeping and reporting requirements and found that, not statutes, but agency rules and regulations comprised the bulk of the paperwork burden. For example, in the Occupational Safety and Health Act, there are five

<sup>13</sup> The Reports Clearance Process, A Report of the Commission on Federal Paperwork 43 (1977).

<sup>14</sup> Paperwork and Redtape Reduction Act of 1979: Hearing before the Subcomm. on Governmental Affairs, at 12, 96th Cong., 1st Sess. (1979).

<sup>15</sup> Id., at 131-132.

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references to reports from employers, but the Commission identified more than 400 reporting and recordkeeping references in OSHA regulations. Bear in mind that OSHA is not an isolated example."<sup>16</sup>

Plainly, this legislative history reveals a Congressional intent to make not only agency forms but also agency regulations subject to the control of the OMB. The intent and purpose of the proponents of this law was to force federal agencies to comply by submitting their information collection requests to OMB for approval, and this approval by OMB was to be evidenced by the proper display of an OMB control number upon the item seeking information. If an agency did not comply then the law was to have some "teeth": unapproved collections of information were to be considered "bootleg" requests that the public could ignore with impunity.

## The 1980 and 1995 Paperwork Reduction Acts.

On December (1), 1980, the Paperwork Reduction Act of 1980 was approved; see P.L. 96-511, 94 Stat. 2812, previously codified at 44 U.S.C. §§ 3501, *et. seq.* This act in substance required all federal agencies to submit to the Director of OMB all "collections of information" for his approval and the assignment of OMB control numbers; see §3507. Subsection (f) of this section provided:

"An agency shall not engage in a collection of information without obtaining from the Director a control number to be displayed upon the information collection request."

Section 3502(4) defined the term "collection of information" generally as the obtaining of facts or opinions by a federal agency "through the use of written report forms, ... reporting ... requirements, or other similar methods calling for ... answers to identical questions." An "information collection request" was defined in §3502(11) to mean "a written report form, application form, schedule, questionnaire, reporting or record keeping requirement, or other similar method calling for the collection of information."

The chief method of securing compliance by federal agencies with this act was §3512, which provided:

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<sup>16</sup> *Id.*, at 165.

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"Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter."

Clearly just from the act itself, federal agencies were required to submit to OMB all information collection requests for its approval, which was to be evidenced by the display of an OMB control number on the request. If any collection of information failed to make the required display, the public was authorized to ignore the request with impunity. Indeed, the Senate Committee on Governmental Affairs expressly so stated:

"The purpose of this section is to protect the public from the burden of collections of information which have not been subjected to the clearance process described by section 3507. Information collection requests which do not display a current control number or, if not, indicate why not are to be considered 'bootleg' requests and may be ignored by the public."<sup>17</sup>

The Public Protection Clause of the PRA was intentionally designed to enlist the support of the American public in helping OMB secure compliance with the commands thereof by federal agencies. This was repeatedly stated in the many reports on this legislation, but was perhaps stated best by President Carter when he signed the bill on December 11, 1980:

"The act I'm signing today will not only regulate the regulators, but it will also allow the President, through the Office of Management and Budget, to gain better control over the Federal Government's appetite for information from the public. For the first time it allows OMB to have the final word on many of the regulations issued by our Government. It also ensures that the public need not fill out forms nor keep records which are not previously approved by OMB."<sup>18</sup>

There can thus be no dispute that this act by clear legislative intent and express statutory language was specifically designed to afford the American public

<sup>17</sup> Senate Report No. 96-930, 1980 U.S. Code Cong. and Admin. News 6241, at 6292.

<sup>18</sup> Presidential Documents, Administration of Jimmy Carter, December 11, 1980, at 2795.



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a right to refuse to provide to a federal agency information which had not been approved by OMB, and approval was to be demonstrated by the proper display upon the request of a control number. This right to refuse to provide information not approved by OMB could be exercised without running the risk of the imposition of penalties of any kind, civil or criminal.

The implementation of regulations for the PRA was hotly contested, and 54 federal agencies and 90 members of the public offered comments and criticisms of the proposed regulations.<sup>19</sup> The major issue of concern related to whether agency regulations, current as well as those to be promulgated in the future, were subject to the requirements of the act, the federal agencies contending that only forms were covered by the act. This contention was rejected by O.M.B.:

"It is not possible to argue that OMB clearance authority is confined to forms and similar instruments... Many reporting requirements are enforced by means of forms, but other reporting requirements and virtually all record keeping requirements are imposed by other means, including oral surveys, guidelines, directives and – most significantly – regulations... The only way all reporting and record keeping requirements can be covered by the Act is to cover these other methods for the collection of information, including regulations," *Id.*, at 13667.

"It follows that OMB has authority over reporting and record keeping requirements in rules that were in effect when the Act was passed as well as in rules subsequently issued with or without public notice and comment," *Id.*, at 13668.

"Pursuant to these authorities, the Director has concluded that all collections of information, including those mandated by regulations, must display a currently valid OMB control number," *Id.*, at 13669.

The initial regulations for the PRA thus expressly subjected agency regulations to the PRA clearance and approval process; see 5 C.F.R. §1320.14.

The act clearly required that forms seeking the collection of information must be approved by OMB and had to display OMB control numbers. But,

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<sup>19</sup> See preliminary remarks to such regulations, 48 Fed. Reg. 13666 (March 31, 1983).

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regarding the instances in which specific "reporting requirement" regulations would likewise be subject to the PRA, the remarks stated:

"As discussed in connection with section 1320.7(d), any collection of information specifically contained in a regulation (such as a form printed as part of a regulation) is considered part of the collection of information requirement imposed by that regulation, and does not need an additional approval. Such a collection must display the control number assigned to the collection of information requirement in the regulation. On the other hand, a form is not considered to be 'specifically contained in' a regulation merely because the regulation refers to or authorizes the form. A generally valid test is that the form requires independent clearance if the information collection component of the related regulation cannot be enforced without the form. For example, if a regulation states that respondents must supply certain data 'on a form to be provided by the agency', the form must be cleared independently." *Id.*, at 13682.

Stated differently, if a reporting requirement regulation simply mentions a form, both the regulation and the form must be separately approved by OMB, although sometimes both might display the same OMB control number.

The first regulations promulgated for the PRA on March 31, 1983 (48 Fed. Reg. 13689), 5 C.F.R., part 1320, were specific in the requirements placed upon the information collection activities of federal agencies. Section 1320.4(a) of these regulations provided that:

"An agency shall not engage in a collection of information without obtaining Office of Management and Budget (OMB) approval of the collection of information and displaying a currently valid OMB control number and, unless OMB determines it to be inappropriate, an expiration date."

Section 1320.7 contained important definitions. A "collection of information" was defined as including forms and reporting requirements, the latter being defined as "a requirement imposed by an agency on persons to provide information to another person or to the agency." By the plain terms of this definition, a "reporting requirement" encompassed a regulation which required the provision of information. The "display" of OMB control numbers meant the printing of such numbers in the upper right hand corner on forms. For regulations, the "display" of the control number was required to be a "part of the regulatory text or as a technical amendment." Section 1320.14 of these regulations plainly commanded

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federal agencies to obtain and display OMB control numbers for agency regulations subject to the act.

Subsequent regulations for the PRA prove the above contention precisely; see 53 Fed. Reg. 16623, May 10, 1988. Section 1320.5 of this edition of the PRA regulations provided that:

"The failure to display a currently valid OMB control number for a collection of information contained in a current rule does not, as a legal matter, rescind or amend the rule; however, its absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information 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."

In May, 1995, Congress substantially amended the PRA in an obvious effort to rectify problems which had arisen under the earlier 1980 act.<sup>20</sup> Such apparently confusing terms like "collection of information requests" and "collection of information requirements" were avoided in this new act, which contained at §3502(3), the following definition of the term "collection of information":

"(3) the term 'collection of information'—

"(A) means 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, regardless of form or format, calling for either—

"(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more 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 general statistical purposes..."

Under §3507 of the new act, Congress has continued its prior prohibition that no federal agency may solicit information without approval of the Director of OMB, which is indicated by "a control number to be displayed upon the collection of information." Like its predecessor, the new act also contains a public protection provision in §3512:

<sup>20</sup> See P.L. 104-13, 109 Stat. 163, currently codified at 44 U.S.C. §3501, et seq.

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“(a) 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 this chapter if –

“(1) the collection of information does not display a valid control number assigned by the Director in accordance with this chapter; or

“(2) the agency fails to inform the person who is to respond to the collection of information 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 section 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.”

Under the new PRA regulations, a “collection of information” is defined in 5 C.F.R. §1320.3(c), as “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons... ‘Collection of information’ includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. As used in this Part, ‘collection of information’ refers to the act of collecting or disclosing information, to the information to be collected or disclosed, to a plan and/or an instrument calling for the collection or disclosure of information, or any of these, as appropriate.” There can be no doubt that existing agency regulations are subject to the PRA because §1320.12 of the PRA regulations clearly commands that they be submitted to OMB for approval.

This legislative and regulatory history plainly demonstrates that collections of information do appear within regulations adopted by various federal agencies and consequently, those regulations must be approved by OMB. Further, regulations subject to the PRA must display a control number, either in the text of the regulation itself or in a preamble to that text; see 5 C.F.R. §1320.3(f).

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form available at [www.fms.treas.gov/prompt/inquiries.html](http://www.fms.treas.gov/prompt/inquiries.html).

(b) *Applicable interest rate.* The rate is published by the Fiscal Service, Department of the Treasury, semiannually in the FEDERAL REGISTER on or about January 1 and July 1. The rate also may be obtained from the Department of Treasury's Financial Management Service (FMS) at 1-800-266-9667. This information is also available at the FMS Prompt Payment Web Site at <http://www.fms.treas.gov/prompt/index.html>.

(c) *Agency payments.* Questions concerning delinquent payments should be directed to the designated agency office, or the office responsible for issuing the payment if different from the designated agency office. Questions about disagreements over payment amount or timing should be directed to the contracting officer for resolution. Small business concerns may obtain additional assistance on payment issues by contacting the agency's Office of Small and Disadvantaged Business Utilization.

**§ 1315.19 Regulatory references to OMB Circular A-125.**

This part supercedes OMB Circular A-125 ("Prompt Payment"). Until revised to reflect the codification in this part, regulatory references to Circular A-125 shall be construed as referring to this part.

**§ 1315.20 Application of Section 1010 of the National Defense Authorization Act for Fiscal Year 2001.**

Section 1010 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398, 114 Stat. 1654), as amended by section 1007 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107, 115 Stat. 1012), requires an agency to pay an interest penalty whenever the agency makes an interim payment under a cost-reimbursement contract for services more than 30 days after the date the agency receives a proper invoice for payment from the contractor. This part implements Section 1010, as amended, and is applicable in the following manner:

(a) This part shall apply to all interim payment requests that are due

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on or after December 15, 2000 under cost-reimbursement service contracts awarded before, on, or after December 15, 2000.

(b) No interest penalty shall accrue under this part for any delay in payment that occurred prior to December 15, 2000.

(c) Agencies are authorized to issue modifications to contracts, as necessary, to conform them to the provisions in this part implementing Section 1010, as amended.

[67 FR 79616, Dec. 30, 2002]

**PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC**

Sec.

- 1320.1 Purpose.
- 1320.2 Effect.
- 1320.3 Definitions.
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- 1320.5 General requirements.
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- 1320.7 Agency head and Senior Official responsibilities.
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- 1320.10 Clearance of collections of information, other than those contained in proposed rules or in current rules.
- 1320.11 Clearance of collections of information in proposed rules.
- 1320.12 Clearance of collections of information in current rules.
- 1320.13 Emergency procedures.
- 1320.14 Public access.
- 1320.15 Independent regulatory agency override authority.
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- 1320.17 Information collection budget.
- 1320.18 Other authority.

**APPENDIX A TO PART 1320—AGENCIES WITH DELEGATED REVIEW AND APPROVAL AUTHORITY**

AUTHORITY: 31 U.S.C. Sec. 1111 and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

SOURCE: 60 FR 44984, Aug. 29, 1995, unless otherwise noted.

**§ 1320.1 Purpose.**

The purpose of this part is to implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35)(the Act) concerning collections of information. It is issued under the authority of section 3516 of the Act, which provides that "The Director

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shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter." It is designed to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government.

## § 1320.2 Effect.

(a) Except as provided in paragraph (b) of this section, this part takes effect on October 1, 1995.

(b)(1) In the case of a collection of information for which there is in effect on September 30, 1995, a control number issued by the Office of Management and Budget under 44 U.S.C. Chapter 35, the provisions of this Part shall take effect beginning on the earlier of:

(i) The date of the first extension of approval for or modification of that collection of information after September 30, 1995; or

(ii) The date of the expiration of the OMB control number after September 30, 1995.

(2) Prior to such extension of approval, modification, or expiration, the collection of information shall be subject to 5 CFR part 1320, as in effect on September 30, 1995.

## § 1320.3 Definitions.

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

(a) *Agency* means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency, but does not include:

- (1) The General Accounting Office;
- (2) Federal Election Commission;
- (3) The governments of the District of Columbia and the territories and possessions of the United States, and their various subdivisions; or
- (4) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b)(1) *Burden* means the total time, effort, or financial resources expended by persons to generate, maintain, re-

tain, or disclose or provide information to or for a Federal agency, including:

- (i) Reviewing instructions;
- (ii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information;
- (iii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information;
- (iv) Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information;
- (v) Adjusting the existing ways to comply with any previously applicable instructions and requirements;
- (vi) Training personnel to be able to respond to a collection of information;
- (vii) Searching data sources;
- (viii) Completing and reviewing the collection of information; and
- (ix) Transmitting, or otherwise disclosing the information.

(2) 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 demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.

(3) A collection of information conducted or sponsored by a Federal agency that is also conducted or sponsored by a unit of 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.

(c) *Collection of information* means, except as provided in § 1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. "Collection of information"

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includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. As used in this Part, "collection of information" refers to the act of collecting or disclosing information, to the information to be collected or disclosed, to a plan and/or an instrument calling for the collection or disclosure of information, or any of these, as appropriate.

(1) A "collection of information" may be in any form or format, including the use of report forms; application forms; schedules; questionnaires; surveys; reporting or recordkeeping requirements; contracts; agreements; policy statements; plans; rules or regulations; planning requirements; circulars; directives; instructions; bulletins; requests for proposal or other procurement requirements; interview guides; oral communications; posting, notification, labeling, or similar disclosure requirements; telegraphic or telephonic requests; automated, electronic, mechanical, or other technological collection techniques; standard questionnaires used to monitor compliance with agency requirements; or any other techniques or technological methods used to monitor compliance with agency requirements. A "collection of information" may implicitly or explicitly include related collection of information requirements.

(2) 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. The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition.

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

(4) As used in paragraph (c) of this section, "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including independent State, territorial, tribal or local entities and separately incorporated subsidiaries or affiliates. For the purposes of this definition of "ten or more persons," "persons" does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government (including military reservists and members of the National Guard while on active duty) when acting within the scope of their employment, but it does include retired and other former Federal employees.

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

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

(d) *Conduct or Sponsor.* A Federal agency is considered to "conduct or sponsor" a collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person, or in similar ways causes another agency, contractor, partner in a cooperative agreement, or person to obtain, solicit, or require the disclosure to third parties or the public of information by or for an agency. A collection of information undertaken by a recipient of a Federal grant is considered to be "conducted or sponsored" by an agency only if:

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

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

(e) *Director* means the Director of OMB, or his or her designee.

(f) *Display* means:

(1) 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), to place the currently valid OMB control number on the front page of the collection of information;

(2) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, to place 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;

(3) In the case of collections of information published in regulations, guidelines, and other issuances in the FEDERAL REGISTER, to publish the currently valid OMB control number in the FEDERAL REGISTER (for example, in the case of a collection of information in a regulation, by publishing the OMB control number in the preamble or the regulatory text for the final rule, in a technical amendment to the final rule, or in a separate notice announcing OMB approval of the collection of information). 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.

(4) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means to inform potential respondents of the OMB control number.

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

(h) *Information* means 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. "Information" does not generally include items in the following categories; however, OMB may determine that any specific item constitutes "information":

(1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument (by contrast, a certification would likely involve the collection of "information" if an agency conducted or sponsored it as a substitute for a



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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);

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

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

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

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

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

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

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

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

(10) Like items so designated by OMB.

(1) OMB refers to the Office of Management and Budget.

(j) *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.

(k) *Person* means an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

(l) *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. 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

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(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 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 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;

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

(5) An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;

(6) Notice that comments may be submitted to 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 that is 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). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of such information in the Code of Federal Regulations constitutes an alternative means of providing it "in a manner that is reasonably calculated to inform the public." 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 provided such information "in a manner that is reasonably calculated to inform the public" 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

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the final rule or in a technical amendment to the final rule), the agency also publish such information along with a table or codified section of OMB control numbers to be included in the Code of Federal Regulations (see § 1320.3(f)(3)).

(D) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means that are reasonably calculated to inform the public of the information described in paragraph (b)(2)(i) of this section.

(c)(1) Agencies shall submit all collections of information, other than those contained in proposed rules published for public comment in the FEDERAL REGISTER or in current regulations that were published as final rules in the FEDERAL REGISTER, in accordance with the requirements in § 1320.10. Agencies shall submit collections of information contained in interim final rules or direct final rules in accordance with the requirements of § 1320.10.

(2) Agencies shall submit collections of information contained in proposed rules published for public comment in the FEDERAL REGISTER in accordance with the requirements in § 1320.11.

(3) Agencies shall submit collections of information contained in current regulations that were published as final rules in the FEDERAL REGISTER in accordance with the requirements in § 1320.12.

(4) Special rules for emergency processing of collections of information are set forth in § 1320.13.

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

(d)(1) 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.

(2) Unless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information—

(i) Requiring respondents to report information to the agency more often than quarterly;

(ii) Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(iii) Requiring respondents to submit more than an original and two copies of any document;

(iv) Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

(v) In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

(vi) Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

(vii) 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 consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

(viii) 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.

(e) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria set forth in paragraph (d) of

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this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

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

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under § 1320.11 or § 1320.12, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule.

(f) Except as provided in § 1320.15, to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof. OMB will reconsider its disapproval of a collection of information upon the request of the agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision.

(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.

(h) An agency should consult with OMB before using currently approved forms or other collections of information after the expiration date printed thereon (in those cases where the actual form being used contains an expiration date that would expire before the end of the use of the form).

**§ 1320.6 Public protection.**

(a) 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 requirements of this part if:

(1) The collection of information does not display, in accordance with § 1320.3(f) and § 1320.5(b)(1), a currently valid OMB control number assigned by

the Director in accordance with the Act; or

(2) The agency fails to inform the potential person who is to respond to the collection of information, in accordance with § 1320.5(b)(2), that such person is not required to respond to the collection of information unless it displays a currently valid OMB control number.

(b) The protection provided by paragraph (a) of this section may be raised in the form of a complete defense, bar, or otherwise to the imposition of such penalty at any time during the agency administrative process in which such penalty may be imposed or in any judicial action applicable thereto.

(c) 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, as prescribed in § 1320.5(b), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If OMB disapproves the whole of such a collection of information (and the disapproval is not overridden under § 1320.15), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If OMB instructs an agency to make a substantive or material change to such a collection of information (and the instruction is not overridden under § 1320.15), the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so changed.

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

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other person through administrative or judicial process.

(e) The protection provided by paragraph (a) of this section 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).

**§ 1320.7 Agency head and Senior Official responsibilities.**

(a) Except as provided in paragraph (b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act and this part. The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this part.

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

(c) The Senior Official shall 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 Act, including the reduction of information collection burdens on the public.

(d) With respect to the collection of information and the control of paperwork, the Senior Official shall establish a process within such office that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this Part.

(e) Agency submissions of collections of information for OMB review, and the accompanying certifications under § 1320.9, may be made only by the agen-

cy head or the Senior Official, or their designee.

**§ 1320.8 Agency collection of information responsibilities.**

The office established under § 1320.7 shall review each collection of information before submission to OMB for review under this part.

(a) This review shall include:

(1) An evaluation of the need for the collection of information, which shall include, in the case of an existing collection of information, an evaluation of the continued need for such collection;

(2) A functional description of the information to be collected;

(3) A plan for the collection of information;

(4) A specific, objectively supported estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection;

(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;

(6) A test of the collection of information through a pilot program, if appropriate; and

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

(b) Such office shall ensure that each collection of information:

(1) Is inventoried, displays a currently valid OMB control number, and, if appropriate, an expiration date;

(2) Is reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. § 3507; and

(3) Informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of—

(i) The reasons the information is planned to be and/or has been collected;

(ii) The way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

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(iii) An estimate, to the extent practicable, of the average burden of the collection (together with 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);

(iv) Whether responses to the collection of information are voluntary, required to obtain or retain a benefit (either authority), or mandatory (citing authority);

(v) The nature and extent of confidentiality to be provided, if any (citing authority); and

(vi) 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.

(c)(1) An agency shall provide the information described in paragraphs (b)(3)(i) through (v) of this section as follows:

(i) 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), such 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.

(ii) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, such 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;

(iii) 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).

(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.

(2) An agency shall provide the information described in paragraph (b)(3)(vi) of this section in a manner that is reasonably calculated to inform the public (see § 1320.5(b)(2)(ii)).

(d)(1) Before an agency submits a collection of information to OMB for approval, and except as provided in paragraphs (d)(3) and (d)(4) of this section, the agency shall provide 60-day notice in the FEDERAL REGISTER, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment 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.

(2) If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the FEDERAL REGISTER notice, the agency should—

(i) Provide more than 60-day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or

(ii) Explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of information and related instructions electronically on demand.

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(3) The agency need not separately seek such public comment for any proposed collection of information contained in a proposed rule to be reviewed under § 1320.11, if the agency provides notice and comment through the notice of proposed rulemaking for the proposed rule and such notice specifically includes the solicitation of comments for the same purposes as are listed under paragraph (d)(1) of this section.

(4) The agency need not seek or may shorten the time allowed for such public comment if OMB grants an exemption from such requirement for emergency processing under § 1320.13.

### § 1320.9 Agency certifications for proposed collections of information.

As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information—

(a) Is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

(b) Is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(c) Reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:

(1) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements; or

(3) An exemption from coverage of the collection of information, or any part thereof;

(d) Is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(e) 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;

(f) Indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(g) Informs potential respondents of the information called for under § 1320.8(b)(3);

(h) 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;

(i) Uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(j) To the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

(k) Uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

### § 1320.10 Clearance of collections of information, other than those contained in proposed rules or in current rules

Agencies shall submit all collections of information, other than those contained either in proposed rules published for public comment in the FEDERAL REGISTER (which are submitted under § 1320.11) or in current rules that were published as final rules in the FEDERAL REGISTER (which are submitted under § 1320.12), in accordance with the following requirements:

(a) On or before the date of submission to OMB, the agency shall, in accordance with the requirements in § 1320.5(a)(1)(iv), forward a notice to the FEDERAL REGISTER stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed 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]. A



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copy of the notice submitted to the FEDERAL REGISTER, together with the date of expected publication, shall be included in the agency's submission to OMB.

(b) Within 60 days 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 in writing 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. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under § 1320.13. Upon approval of a collection of information, OMB shall assign an OMB control number and, if appropriate, an expiration date. OMB shall not approve any collection of information for a period longer than three years.

(c) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall assign without further delay, an OMB control number that shall be valid for not more than one year.

(d) 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.

(e)(1) In the case of a collection of information not contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(i) Conduct the review established under § 1320.8, including the seeking of public comment under § 1320.8(d); and

(ii) After having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of in-

formation, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

(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.

(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.

### § 1320.11 Clearance of collections of information in proposed rules.

Agencies shall submit collections of information contained in proposed rules published for public comment in the FEDERAL REGISTER in accordance with the following requirements:

(a) The agency shall include, in accordance with the requirements in § 1320.5(a)(1)(iv) and § 1320.8(d)(1) and (2), 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) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the FEDERAL

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REGISTER, in such form and in accordance with such procedures as OMB may direct. Such submissions shall include a copy of the proposed regulation and preamble.

(c) Within 60 days of publication of the proposed rule, but subject to paragraph (e) of this section, OMB may file public comments on collection of information provisions. 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.

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

(e) OMB shall provide at least 30 days after receipt of the proposed collection of information before submitting its comments or making its decision, except as provided under § 1320.13.

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

(g) If OMB has not filed public comments under paragraph (c) of this section, or has approved without conditions the collection of information contained in a rule before the final rule is published in the FEDERAL REGISTER, OMB may assign an OMB control number prior to publication of the final rule.

(h) On or before the date of publication of the final rule, the agency shall submit the final rule to OMB, unless it has been approved under paragraph (g) of this section (and not substantively or materially modified by the agency after approval). Not later than 60 days

after publication, but subject to paragraph (e) of this section, OMB shall approve, instruct the agency to make a substantive or material change to, or disapprove, the collection of information contained in the final rule. Any such instruction to change or disapprove may be based on one or more of the following reasons, as determined by OMB:

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

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

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

(i) After making such decision to approve, to instruct the agency to make a substantive or material change to, or disapprove, the collection of information, OMB shall so notify the agency. If OMB approves the collection of information or if it has not acted upon the submission within the time limits of this section, the agency may request, and OMB shall assign an OMB control number. If OMB disapproves or instructs the agency to make substantive or material change to the collection of information, it shall make the reasons for its decision publicly available.

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

(k) After receipt of notification of OMB's approval, instruction to make a substantive or material change to, disapproval of a collection of information, or failure to act, the agency shall publish a notice in the FEDERAL REGISTER to inform the public of OMB's decision.

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(1) 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.

**§ 1320.12 Clearance of collections of information in current rules.**

Agencies shall submit collections of information contained in current rules that were published as final rules in the FEDERAL REGISTER in accordance with the following procedures:

(a) In the case of a collection of information contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(1) Conduct the review established under § 1320.8, including the seeking of public comment under § 1320.8(d); and

(2) After having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of information, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(b)(1) In the case of a collection of information contained in a published current rule that was not required to be submitted for OMB review under the Paperwork Reduction Act at the time the collection of information was made part of the rule, but which collection of information is now subject to the Act and this part, the agency shall:

(i) Conduct the review established under § 1320.8, including the seeking of public comment under § 1320.8(d); and

(ii) After having made a reasonable effort to seek public comment, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

In the case of a collection of information not previously approved, approval shall be granted for such period, which shall not exceed 60 days, unless extended by the Director for an additional 60 days, and an OMB control number assigned. Upon assignment of the OMB control number, and in accordance with § 1320.3(f) and § 1320.5(b), the agency shall display the number and 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.

(c) On or before the day of submission to OMB under paragraphs (a) or (b) of this section, the agency shall, in accordance with the requirements set forth in § 1320.5(a)(1)(iv), forward a notice to the FEDERAL REGISTER stating that OMB review is being sought. The notice shall direct requests for copies of the 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]. A copy of the notice submitted to the FEDERAL REGISTER, together with the date of expected publication, shall be included in the agency's submission to OMB.

(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. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under § 1320.13.

(e)(1) Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. OMB shall not approve any collection of information for a period longer than three years. Approval of any collection

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of information submitted under this section will be for the full three-year period, unless OMB determines that there are special circumstances requiring approval for a shorter period.

(2) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall assign without further delay, an OMB control number that shall be valid for not more than one year.

(3) 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.

(f)(1) If OMB disapproves a collection of information contained in an existing rule, or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, OMB shall:

(i) Publish an explanation thereof in the FEDERAL REGISTER; and

(ii) Instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under § 1320.10 or § 1320.11, as appropriate; and

(iii) Extend the existing approval of the collection of information (including an interim approval granted under paragraph (b) of this section) for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under § 1320.10 or § 1320.11, as appropriate.

(2) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the

FEDERAL REGISTER. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, change, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of the above in the FEDERAL REGISTER and submission to OMB shall initiate OMB clearance procedures under section 3507(d) of the Act and § 1320.11. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

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

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

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

(3) Has refused within a reasonable time to publish a final rule 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.

(h)(1) Upon disapproval by OMB of a collection of information subject to this section, except as provided in paragraph (f)(1)(iii) of 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