EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 10, 1982

CIRCULAR No. A-124

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Patents - Small Business Firms and Nonprofit Organizations

1. Purpose. This Circular provides policies, procedures, and guidelines with respect to inventions made by small business firms and nonprofit organizations, including universities, under funding agreements with Federal agencies where a purpose is to perform experimental, developmental, or research work.

2. Rescissions. This Circular supersedes OMB Bulletin 81-22 effective March 1, 1982.

3. Authority. This Circular is issued pursuant to the authority contained in 35 U.S.C. §206 (§6 of P.L. 96-517, "The Patent and Trademark Amendments of 1980").

4. Background. After many years of public debate on means to enhance the utilization of the results of Government funded research, Public Law 96-517 was enacted. This Act gives nonprofit organizations and small businesses, with limited exceptions, a first right of refusal to title in inventions they have made in performance of Government grants and contracts. The Act takes precedence over approximately 26 conflicting statutory and administrative policies.

Under the Act, the Office of Federal Procurement Policy (OFPP) is responsible for the issuance of the regulations implementing 35 U.S.C. §202-204 after consultation with the Office of Science and Technology Policy (OSTP). On July 2, 1981, OMB Bulletin 81-22 was issued to provide interim regulations while agency and public comments were sought. Based on a review of these comments, this Circular is issued to establish permanent implementing regulations and a standard patent rights clause.

5. Policy and Scope. This Circular takes effect on March 1, 1982, and will be applicable to all funding agreements with small business firms and domestic nonprofit organizations executed on or after that date. This includes

a review of these comments, this Circular is issued to establish permanent implementing regulations and a standard patent rights clause.

5. Policy and Scope. This Circular takes effect on March 1, 1982, and will be applicable to all funding agreements with small business firms and domestic nonprofit organizations executed on or after that date. This includes

subcontracts at any tier made after March 1, 1982, with small business firms and nonprofit organizations even if the prime funding agreement was made prior to March 1, 1982. Unless prohibited by law, agencies are encouraged to treat subject inventions made under funding agreements made prior to July 1, 1981, in substantially the same manner as contemplated by P.L. 96-517 and this Circular for inventions made under funding agreements entered into subsequent to July 1, 1981. This can be accomplished through the granting of waivers of title on terms and conditions substantially similar to those set forth in the standard clause of Attachment A.

Agencies should be alert to determining whether amendments made after March 1, 1982, to funding agreements entered into prior to July 1, 1981, result in new funding agreements subject to this Circular and the Act. Renewals and continuations after March 1, 1982, of funding agreements entered into prior to July 1, 1981, should be normally treated as new funding agreements.

This Circular is intended to establish uniform and coordinated implementation of 35 U.S.C. §200-206 so as to foster the policy and objectives set forth in 35 U.S.C. §200.

6. Definitions. As used in this Circular --

a. The term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement, as herein defined.

b. The term "contractor" means any person, small business firm or nonprofit organization that is a party to a funding agreement.

c. The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

d. The term "subject invention" means any invention of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement.

e. The term "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such

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conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

f. The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

g. The term "small business firm" means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. §632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this Circular, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 121.3-12, respectively, will be used.

h. The term "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. §501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. §501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

7. Use of the Patent Rights (Small Business Firm or Nonprofit Organization) (March 1982) Clause.

a. Each funding agreement awarded to a small business firm or domestic nonprofit organization which has as a purpose the performance of experimental, developmental or research work shall contain the "Patent Rights (Small Business Firm or Nonprofit Organization) (March 1982)" clause set forth in Attachment A with such modifications and tailoring as may be authorized in Part 8, except that the funding agreement may contain alternative provisions--

(1) when the funding agreement is for the operation of a Government-owned research or production facility; or

(2) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 38 of Title 35 of the United States Code; or

determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 38 of Title 35 of the United States Code; or

(3) when it is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities.

b. (1) Any determination under Part 7.a.(2) of this Circular will be in writing and accompanied by a written statement of facts justifying the determination. The statement of facts will contain such information as the funding Federal agency deems relevant and, at minimum, will (i) identify the small business firm or nonprofit organization involved, (ii) describe the extent to which agency action restricted or eliminated the right to retain title to a subject invention, (iii) state the facts and rationale supporting the agency action, (iv) provide supporting documentation for those facts and rationale, and (v) indicate the nature of any objections to the agency action and provide any documentation in which those objections appear. A copy of each such determination and written statement of facts will be sent to the Comptroller General of the United States within 30 days after the award of the applicable funding agreement. In cases of determinations application to small business firms, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(2) To assist the Comptroller General to accomplish his or her responsibilities under 35 U.S.C. §202, each Federal agency that enters into any funding agreements with nonprofit organizations or small business firms during the applicable reporting period shall accumulate and, at the request of the Comptroller General, provide the Comptroller General or his or her duly authorized representative the total number of prime funding agreements entered into with small business firms or nonprofit organizations that contain the patent rights clause of Attachment A during each period of October 1 through September 30, beginning October 1, 1982.

c. (1) Agencies are advised that Part 7.a. applies to subcontracts at any tier under prime funding agreements with contractors that are other than small business firms or nonprofit organizations. Accordingly, agencies should take appropriate action to ensure that this requirement is reflected in the patent clauses of such prime funding agreements awarded after March 1, 1982.

(2) In the event an agency has outstanding prime funding agreements that do not contain patent flow-down provisions consistent with either this Circular or OMB Bulletin 81-22 (if it was applicable at the time the funding

appropriate action to ensure that this requirement is reflected in the patent clauses of such prime funding agreements awarded after March 1, 1982.

(2) In the event an agency has outstanding prime funding agreements that do not contain patent flow-down provisions consistent with either this Circular or OMB Bulletin 81-22 (if it was applicable at the time the funding

agreement was awarded), the agency shall take appropriate action to ensure that small business firms or domestic nonprofit organization subcontractors under such prime funding agreements that received their subcontracts after July 1, 1981, will receive rights in their subject inventions that are consistent with P.L. 96-517 and this Circular. Appropriate actions might include (i) amendment of prime contracts and/or subcontracts; (ii) requiring the inclusion of the clause of Attachment A as a condition of agency approval of a subcontract; or (iii) the granting of title to the subcontractor to identified subject inventions on terms substantially the same as contained in the clause of Attachment A in the event the subcontract contains a "deferred determination" or "acquisition by the Government" type of patent rights clause.

d. To qualify for the clause of Attachment A, a prospective contractor may be required by an agency to certify that it is either a small business firm or a domestic nonprofit organization. If the agency has reason to question the status of the prospective contractor as a small business firm or domestic nonprofit organization, it may file a protest in accordance with 13 C.F.R. 121.3-5 if small business firm status is questioned or require the prospective contractor to furnish evidence to establish its status as a domestic nonprofit organization.

8. Instructions for Modification and Tailoring of the Clause of Attachment A.

a. Agencies should complete the blank in paragraph g.(2) of the clause of Attachment A in accordance with their own or applicable Government-wide regulations such as the FPR or DAR. The flow-down provisions of the clause cited by the agency should, of course, reflect the requirement of Part 7.c.(1).

b. Agencies should complete paragraph 1. "Communications" at the end of the clause of Attachment A by designating a central point of contact for communications on matters relating to the clause. Additional instructions on communications may also be included in paragraph 1.

c. Agencies may replace the italicized or underlined words and phrases with those appropriate to the particular funding agreement. For example "contract" could be replaced by "grant", "contractor" by "grantee", and "contracting officer" by "grants officer." Depending on its use, "Federal agency" can be replaced either by the identification of the agency or by the specification of the particular office or official within that agency.

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d. When the agency head or duly authorized designee determines at the time of contracting with a small business firm or nonprofit organization that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing treaty or agreement, a sentence may be added at the end of paragraph b. of the clause of Attachment A as follows:

> "This license will include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: _____; or pursuant to any future treaties or agreements with foreign governments or international organizations."

The blank in the above should be completed with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award which are not listed. The above language may be modified by agencies by deleting the reference to future treaties or agreements or by otherwise more narrowly defining classes of future treaties or agreements. The language may also be modified to make clear that the rights granted to the foreign government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even the assignment of title in the foreign country involved might be required. Agencies may also modify the language above to provide for the direct licensing by the contractor of the foreign government or international organization.

e. To the extent not required by other provisions of the funding agreement, agencies may add additional subparagraphs to paragraph (f) of the patent rights clause of Attachment A to require the contractor to do one or more of the following:

(1) Provide periodic (but no more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report;

(2) Provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none;

(3) Provide notification of all subcontracts for experimental, developmental, or research work; and

disclosed during the period covered by the report;

(2) Provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none;

(3) Provide notification of all subcontracts for experimental, developmental, or research work; and

(4) Provide, upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

Part 9. Publication or Release of Invention Disclosures

a. 35 U.S.C. §205 provides as follows:

> "Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office."

b. To the extent authorized by 35 U.S.C. §205, agencies shall not disclose to third parties pursuant to requests under the Freedom of Information Act (FOIA) any information disclosing a subject invention for a reasonable time in order for a patent application to be filed. With respect to subject inventions of contractors that are small business firms or nonprofit organizations, a reasonable time shall be the time during which an initial patent application may be filed under paragraph c. of the clause of Attachment A or such other clause that may be used in the funding agreement. However, an agency may disclose such subject inventions under the FOIA, at its discretion, after a contractor has elected not to retain title or after the time in which the contractor is required to make an election if the contractor has not made an election within that time. Similarly, an agency may honor an FOIA request at its discretion if it finds that the same information has previously been published by the inventor, contractor, or otherwise. If the agency plans to file itself when the contractor has not elected title, it may, of course, continue to avail itself of the authority of 35 U.S.C. §205.

c. As authorized by 35 U.S.C. §205, Federal agencies shall not release copies of any document which is part of an application for patent filed on a subject invention to which a small business firm or nonprofit organization elected to retain title.

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c. As authorized by 35 U.S.C. §205, Federal agencies shall not release copies of any document which is part of an application for patent filed on a subject invention to which a small business firm or nonprofit organization elected to retain title.

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agency through publication in Government or other publications of technical reports of contractors or others. In recognition of the fact that such publication, if it included descriptions of a subject invention, could create bars to obtaining patent protection, it is the policy of the executive branch that agencies will not include in such publication programs, copies of disclosures of inventions submitted by small business firms or nonprofit organizations, pursuant to paragraph c. of the clause of Attachment A, except that under the same circumstances under which agencies are authorized to release such information pursuant to FOIA requests under Part 9.b. above, agencies may publish such disclosures.

e. Nothing in this Part is intended to preclude agencies from including in the publication activities described in the first sentence of Part 9.d., the publication of materials describing a subject invention to the extent such materials were provided as part of a technical report or other submission of the contractor which were submitted independently of the requirements of the patent rights provisions of the contract. However, if a small business firm or nonprofit organization notifies the agency that a particular report or other submission contains a disclosure of a subject invention to which it has elected or may elect title, the agency will use reasonable efforts to restrict its publication of the material for six months from date of its receipt of the report or submission or, if earlier, until the contractor has filed an initial patent application. Agencies, of course, retain the discretion to delay publication for additional periods of time.

f. Nothing in this Part 9 is intended to limit the authority of agencies provided in 35 U.S.C. §205 in circumstances not specifically described in this Part 9.

10. Reporting on Utilization of Subject Inventions.

a. Paragraph h. of the clause of Attachment A provides that agencies have the right to receive periodic reports from the contractor on utilization of inventions. In accordance with such instructions as may be issued by the Department of Commerce, agencies shall obtain such information from their contractors. Pending such instructions, agencies should not impose reporting requirements. The Department of Commerce and the agencies, in conjunction with representatives of small business and nonprofit organizations, shall work together to establish a uniform periodic reporting system.

b. To the extent any such data or information supplied by the contractor is considered by the contractor, or its licensee or assignee, to be privileged and confidential and is so marked, agencies shall not, to the extent permitted by

business and nonprofit organizations, shall work together to establish a uniform periodic reporting system.

b. To the extent any such data or information supplied by the contractor is considered by the contractor, or its licensee or assignee, to be privileged and confidential and is so marked, agencies shall not, to the extent permitted by

35 U.S.C. §202(c)(5), disclose such information to persons outside the Government.

11. Retention of Rights by Inventor. Agencies which allow an inventor to retain rights to a subject invention made under a funding agreement with a small business firm or nonprofit organization contractor, as authorized by 35 U.S.C. §202(d), will impose upon the inventor at least those conditions that would apply to a small business firm contractor under paragraphs d.(ii) and (iii); f.(4); h.; i.; and j. of the clause of Attachment A.

12. Government Assignment to Contractor of Rights in Invention of Government Employee. In any case when a Federal employee is a co-inventor of any invention made under a funding agreement with a small business firm or nonprofit organization and the Federal agency employing such co-inventor transfers or reassigns the right it has acquired in the subject invention from its employee to the contractor as authorized by 35 U.S.C. 202(e), the assignment will be made subject to the same conditions as would apply to the contractor under the clause of Attachment A.

13. Exercise of March-in Rights.

a. The following procedures shall govern the exercise of the march-in rights of the agencies set forth in 35 U.S.C. §203 and the clause at Attachment A.

b. Whenever an agency receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding in accordance with the procedures of Part 13.c.-h. below, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor. In the absence of any comments from the contractor within 30 days, the agency may, at its discretion, proceed with the procedures below. If a comment is received, whether or not within 30 days, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

c. A march-in proceeding shall be initiated by the issuance of a written notice by the agency to the contractor and its assignee or exclusive licensee, as applicable, stating that the agency is considering the exercise of march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put the contractor on notice of the facts upon which the action would be based and shall specify the field or fields of use in which the agency is considering requiring licensing. The notice shall advise the

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contractor (assignee or exclusive licensee) of its rights, as set forth in this Circular and in any supplemental agency regulations. The determination to exercise march-in rights shall be made by the head of the agency or designee, except as provided in part 13.j. below.

d. Within 30 days after receipt of the written notice of march-in, the contractor (assignee or exclusive licensee) may submit, in person, in writing, or through a representative, information or argument in opposition to the proposed march-in, including any additional specific information which raises a genuine dispute over the material facts upon which the march-in is based. If the information presented raises a genuine dispute over the material facts, the head of the agency or designee shall undertake or refer the matter to another official for fact-finding.

e. Fact-finding shall be conducted in accordance with the procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses and confront such persons as the agency may present. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency. Any portion of a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensees shall be closed to the public, including potential licensees.

f. The official conducting the fact-finding shall prepare written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding. A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail.

g. In cases in which fact-finding has been conducted, the head of the agency or designee shall base his or her determination on the facts found, together with any other information and argument submitted by the contractor (assignee or exclusive licensee), and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. §200-206 and this Circular shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found that are clearly erroneous. Written notice of the determination whether march-in rights will be exercised shall be made by the

information and argument submitted by the contractor (assignee or exclusive licensee), and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. §200-206 and this Circular shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found that are clearly erroneous. Written notice of the determination whether march-in rights will be exercised shall be made by the

head of the agency or designee and sent to the contractor (assignee or exclusive licansee) by certified or registered mail within 90 days after the completion of fact-finding or the proceedings will be deemed to have been terminated and thereafter no march-in based on the facts and reasons upon which the proceeding was initiated may be exercised.

h. An agency may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

i. The procedures of this Part shall also apply to the exercise of march-in rights against inventors receiving title to subject inventions under 35 U.S.C. §202(d) and, for that purpose, the term "contractor" as used in this Part shall be deemed to include the inventor.

j. Notwithstanding the last sentence of Part 13.c., a determination to exercise march-in in cases where the subject invention was made under a contract may be made initially by the contracting officer in accordance with the procedures of the Contract Disputes Act. In such cases, the procedures of the Contract Disputes Act will apply in lieu of those in Parts 13.d.-g. above (except that the last sentence of Part 13.e. shall continue to apply). However, when the procedures of this Part 13.j. are used, the contractor, assignee, or exclusive license will not be required to grant a license and the Government will not grant any license until after either: (1) 90 days from the date of the contractor's receipt of the contracting officer's decision, if no appeal of the decision has been made to an agency board of contract appeals, or if no action has been brought under Section 10 of the Act within that time; or (2) the board or court, as the case may be, has made a final decision in cases when an appeal or action has been brought within 90 days of the contracting officer's decision.

k. Agencies are authorized to issue supplemental procedures, not inconsistent herewith, for the conduct of march-in proceedings.

14. Appeals.

a. The agency official initially authorized to take any of the following actions shall provide the contractor with a written statement of the basis for his or her action at the time the action is taken, including any relevant facts that were relied upon in taking the action:

(1) A refusal to grant an extension under paragraph c.(4) of the clause of Attachment A.

written statement of the basis for his or her action at the time the action is taken, including any relevant facts that were relied upon in taking the action:

(1) A refusal to grant an extension under paragraph c.(4) of the clause of Attachment A.

(2) A request for a conveyance of title under paragraph d. of the clause of Attachment A.

(3) A refusal to grant a waiver under paragraph i. of the clause of Attachment A.

(4) A refusal to approve an assignment under paragraph k.(1) of the clause of Attachment A.

(5) A refusal to approve an extension of the exclusive license period under paragraph k.(2) of the clause of Attachment A.

b. Each agency shall establish and publish procedures under which any of the agency actions listed in Part 14.a. above may be appealed to the head of the agency or designee. Review at this level shall consider both the factual and legal basis for the action and its consistency with the policy and objectives of 35 U.S.C. §200-206 and this Circular.

c. Appeals procedures established under Part 14.b. above shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in Part 13.e.-g. of this Circular whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under paragraph d. of the clause of Attachment A, including any dispute as to whether or not an invention is a subject invention.

d. To the extent that any of the actions described in Part 14.a. are subject to appeal under the Contracts Dispute Act, the procedures under that Act will satisfy the requirements of Parts 14.b. and c. above.

15. Licensing of Background Patent Rights to Third Parties.

a. A funding agreement with a small business firm or a domestic nonprofit organization will not contain a provision allowing a Federal agency to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and a written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign the justification required for such provisions.

b. A Federal agency will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is

the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign the justification required for such provisions.

b. A Federal agency will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is

necessary for the practice of a subject invention or for the use of a work object of the funding agreement and that such action is necessary to achieve practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for an agency hearing, and the contractor shall be given prompt notification of the determination by certified or registered mail.

16. Administration of Patent Rights Clause.

a. It is important that the Government and the contractor know and exercise their rights in subject inventions in order to ensure their expeditious availability to the public, to enable the Government, the contractor, and the public to avoid unnecessary payment of royalties, and to defend themselves against claims and suits for patent infringement. To attain these ends, contracts should be so administered that:

(1) Inventions are identified, disclosed, and an election is made as required by the contract clause.

(2) The rights of the Government in such inventions are established;

(3) When appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(4) The rights in patent applications are documented by formal instruments such as licenses or assignments;

(5) Expeditious commercial utilization of such inventions is achieved.

b. With respect to the conveyance of license or assignments to which the Government may be entitled under the clause of Attachment A, agencies should follow the guidance provided in 41 CFR 1-9.109-5 or 32 CFR 9-109.5.

c. In the event a subject invention is made under funding agreements of more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

17. Modification of Existing Agency Regulations.

a. Existing agency patent regulations or other published policies concerning inventions made under funding agreements shall be modified as necessary to make them

[illegible] designate one agency as responsible for administration of the rights of the Government in the invention.

17. Modification of Existing Agency Regulations.

a. Existing agency patent regulations or other published policies concerning inventions made under funding agreements shall be modified as necessary to make them

consistent with this Circular and 35 U.S.C. §200-206. Agency regulations shall not be more restrictive or burdensome than the provisions of this Circular.

b. After March 1, 1982, this Circular and 35 U.S.C. §200-206 shall take precedence over any conflicting agency regulations or policies.

18. Lead Agency Designation. In order to assist the Office of Federal Procurement Policy to ensure that 35 U.S.C. §200-206 and this Circular are implemented in a uniform and consistent manner, the following responsibilities are assigned to the Department of Commerce (hereafter referred to as "The Department"). Other agencies shall fully cooperate and assist in the carrying out of these responsibilities:

a. The Department will monitor agency regulations and procedures for consistency with the Act and this Circular, and it shall provide recommendations to OFPP and agencies whenever it finds inconsistencies.

b. The Department will consult with representatives of 19 agencies and contractors to obtain advice on --

(1) the development of the periodic reporting system required under Part 10 of this Circular, and

(2) changes in this Circular which may be needed based on actual experience under the Circular.

c. The Department will accumulate, maintain, and publish such statistics and analysis on utilization and activities under this Circular and under Government patent policies and practices generally, as may be agreed to between the Department and OFPP.

d. The Department will make recommendations to OFPP on changes that may be needed in this Circular.

19. Sunset Review Date. This Circular shall have a policy review no later than three years from the date of its issuance.

20. Inquiries. All questions or inquiries should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, telephone number (202) 395-6810.

Donald E. Sowle
Administrator

David A. Stockman
Director

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The following is the standard patent rights clause to be used in funding agreements as provided in Part 7.

PATENT RIGHTS (Small Business Firms and Nonprofit Organizations) (March 1982)

a. Definitions

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) "Subject Invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. §632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 C.F.R. 121.3-8 and 13 C.F.R. 121.3-12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC §501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 USC §501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC §501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 USC §501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

b. Allocation of Principal Rights

The contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the contractor retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

c. Invention Disclosure, Election of Title and Filing of Patent Applications by Contractor.

(1) The contractor will disclose each subject invention to the Federal agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within twelve months of disclosure to the contractor; provided that in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The contractor will file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date

prior to the end of the statutory period.

(3) The contractor will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The contractor will file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date

permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the agency, election, and filing may, at the discretion of the funding Federal agency, be granted.

d. Conditions When the Government May Obtain Title.

(1) The contractor will convey to the Federal agency, upon written request, title to any subject invention:

(i) If the contractor fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title.

(ii) In those countries in which the contractor fails to file patent applications within the times specified in c. above; provided, however, that if the contractor has filed a patent application in a country after the times specified in c., above, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

(iii) In any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

e. Minimum Rights to Contractor

(1) The contractor will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the contractor fails to disclose the subject invention within the times specified in c., above. The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that party of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application

so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that party of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application

of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations. This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Contractor Action to Protect the Governments Interest

(1) The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the

each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the

information required by c.(1) above. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The contractor will notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

g. Subcontracts

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not,as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental, developmental or research work the patent rights clause required by (cite section of agency implementing regulations, FPR, or DAR).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

h. Reporting on Utilization of Subject Inventions

The contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of

the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

h. Reporting on Utilization of Subject Inventions

The contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of

a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph j. of this clause. To the extent data or information supplied under this section is considered by the contractor, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by 35 USC §202(c)(5), it will not disclose such information to persons outside the Government.

i. Preference for United States Industry

Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in Rights

The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in OMB Circular A- __ (and agency regulations at ____) to require the contractor, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to

licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to

take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph i of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special Provisions for Contracts with Non-profit Organizations

If the contractor is a non-profit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention provided that such assignee will be subject to the same provisions as the contractor);

(2) The contractor may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) five years from first commercial sale or use of the invention; or

(ii) eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, the Federal agency approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial

the invention; or

(ii) eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, the Federal agency approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial

sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention.

(3) The contractor will share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

1. Communications. (Complete According to Instructions at Part 8.b. of this Circular).

END OF CLAUSE

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D. C.

See pg. 10 for instructions — See pg. 13-15 for Format

August 7, 1952

CIRCULAR NO. A-1
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Bureau of the Budget's system of Circulars and Bulletins to executive departments and establishments

1. Series of communications. This revision of Circular No. A-1, which replaces and rescinds Circular No. A-1 Revised, dated August 3, 1948, describes the Bureau's system of Circulars and Bulletins which are employed to communicate various instructions and information to the executive departments and establishments. The Circular series is used when the nature of the subject matter is of continuing effect. The Bulletin series is used when the nature of the subject matter requires single or one-time action by the departments and establishments or is of a transitory nature.

2. Circulars. Circulars are identified by the letter "A" and a number. When an instruction needs to be revised, the pertinent Circular will be reissued with the same number and a new date. When the subject matter of a Circular is of such a nature as to require frequent changes in order to keep it current, revised pages may be issued in lieu of reissuing the entire set of instructions in a Circular. These changes will be promulgated as a part of or attached to transmittal memorandums which will be numbered chronologically and identified by the Circular number.

3. Bulletins. Bulletins are issued in an annual series, numbered in chronological order. The last two numerals of the fiscal year of issuance are used to indicate the annual series; for example, Bulletin No. 53-1 is the first Bulletin issued in fiscal year 1953.

4. Instructions for use of Circulars and Bulletins. The terms "departments and establishments" used in the Circular and Bulletin series include any executive department, independent commission, board, bureau, office, agency, Government-owned or controlled corporation, or other establishment of the Government, including regulatory commission or board, and also the municipal government of the District of Columbia, but do not include the legislative or judicial branches of the Government.

The provisions of any Circular or Bulletin, except as otherwise specifically provided in any given Circular or Bulletin, shall be observed by every such department or establishment insofar as the subject matter pertains to the affairs of such department or establishment.

specifically provided in any given Circular or Bulletin, shall be observed by every such department or establishment insofar as the subject matter pertains to the affairs of such department or establishment.

(No. A-1)

5. Distribution. Circulars and Bulletins are distributed only to the heads of executive departments and establishments, their budget officers, and agency officials who have been authorized by the heads of the departments and establishments to receive them.

6. Other regulations. Attention is also directed to the Budget-Treasury Regulations, issued jointly by the Bureau of the Budget and the Treasury Department, which are promulgated independently of the Circular and Bulletin series of the Bureau of the Budget.

FREDERICK J. LAWTON
Director

(No. A-1)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 31, 1981

MEMORANDUM TO: PROGRAM ASSOCIATE DIRECTORS
DEPUTY ASSOCIATE DIRECTORS
ASSISTANT DIRECTORS
OFPP ADMINISTRATOR
OIRA ADMINISTRATOR
OFFICE HEADS

FROM: Glenn Schleede

SUBJECT: Revised OMB Manual Section 510, Formal Guidance Documents

OMB Manual Section 510, Formal Guidance Documents, provides both general and specific instructions on preparing, routing and issuing OMB directives. OMB directives include Circulars, Bulletins, Memoranda to Heads of Executive Agencies, Federal Procurement Policy Letters, and Transmittal Memoranda.

Section 510 has been revised to meet two objectives. First, the Paperwork Reduction Act of 1980 (P.L. 96-511) and Executive Order 12291, Federal Regulation, directed agencies, including OMB, to comply with regulatory and paperwork reduction requirements. The revisions reflect the new, stricter requirements in the Act and the Executive Order. Second, we have strengthened the procedures for developing and issuing OMB directives to ensure all affected parties are consulted and to minimize the burden on Federal agencies and the public.

The revised Section reflects most of the comments and concerns we received from OMB divisions on the earlier draft. I hope you will carefully review these new procedures and encourage your staff to do the same. Compliance with the requirements in this Section should expedite issuing OMB directives while ensuring that the number and scope of our directives are kept to the minimum necessary to perform OMB's functions.

Attachment

ensuring that the number and scope of our directives are kept to the minimum necessary to perform OMB's functions.

Attachment

OFFICE OF MANAGEMENT AND BUDGET MANUAL

TRANSMITTAL MEMORANDUM NO. 10

SUBJECT: Revised Section and Exhibit for the OMB Manual

Attached is a revised OMB Manual Section 510, Formal Guidance Documents. This revised Section reflects new OMB procedures to: (1) comply with Executive Order 12291, Federal Regulation, and the Paperwork Reduction Act of 1980 (P.L. 96-511), and (2) to provide a more systematic and centralized process for preparing, routing and issuing draft and final OMB Directives.

The most significant revisions to Section 510 are:

- The Office of Information and Regulatory Affairs is responsible for reviewing proposed directives when that directive "impacts regulatory or paperwork burdens of the private sector, or State and local government or where covered by provisions of Executive Order 12291, Federal Regulation, or the Paperwork Reduction Act of 1980 (P.L. 96-511)."

- Sunset reviews of OMB directives require a memo to the Director justifying continuation of the directive.

- OFPP Policy Letters are subject to the same clearance procedures as other OMB directives.

- Administrative Notes formerly issued to State and local government entities as clarifying instructions are terminated. Transmittal Memoranda will be used to clarify or change directives.

- OMB regulatory agenda responsibilities are centralized in the office of the Assistant Director for Administration.

Please substitute this Section and Exhibit for the ones currently in the Manual. This transmittal memorandum should be filed behind the "Transmittal Memos" divider in the Manual.

Linda L. Smith
Assistant Director
for Administration

Attachments

Linda L. Smith
Assistant Director
for Administration

Attachments

Section 510: FORMAL GUIDANCE DOCUMENTS

510-1. Purpose.

This section prescribes procedures and assigns responsibilities for preparing, issuing, and maintaining the formal documents (directives) by which OMB provides guidance to or obtains information from Federal agencies.

510-2. Objectives.

The aim of these procedures and responsibilities is to supply necessary guidance to Federal agencies in a system of documents that are carefully composed, readily understood, adequately supported, easily referenced, and current. It is the further aim to assure that timely and appropriate internal procedures are established for OMB staff activities that result from directives.

510-3. Definitions.

A directive is a written issuance that uses OMB's authority to give direction or instructions of general applicability to Federal agencies, and may be in any of the following forms:

a. A Circular is a directive communicating significant governmentwide policy of a continuing nature.

b. A Bulletin is a directive communicating guidance that is transitory in nature or that requires one-time action by the agencies.

c. A Memorandum to Heads of Executive Departments and Establishments is used to announce temporary policy emphases or to remind agencies of existing policies.

d. A Federal Procurement Policy Letter is a directive of a continuing nature issued under the authority of the Administrator for Federal Procurement Policy.

e. A Transmittal Memorandum transmits a change to or rescinds an existing Circular, Bulletin, or Federal Procurement Policy Letter.

Administrator for Federal Procurement Policy.

e. A Transmittal Memorandum transmits a change to or rescinds an existing Circular, Bulletin, or Federal Procurement Policy Letter.

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f. A Regulation is a formal rule issued by OMB, which may or may not be promulgated under an explicit statutory provision, that governs the operations of a Federal program or function. Regulations may cover Federal procurement, management, financial assistance or similar area.

510-4. Responsibilities.

a. The division originating any directive is responsible for:

(1) Making an initial determination on the need for and type of directive to be issued, including any need to codify the directive in the Code of Federal Regulations;

(2) Assuring that the reporting and recordkeeping requirements that will be imposed on agencies and the public are the minimum needed to fulfill OMB's responsibilities;

(3) Writing the directives and accompanying instructions in clear and concise English;

(4) Providing necessary materials and coordination in regard to:

(a) Executive Order 12291, Federal Regulation (see Section 510-6.a.);

(b) National Archives and Records Service reporting (see Section 510-6.d.);

(c) Consultation with unions (see Section 510-6.e.);

(d) Intergovernmental consultation (see Section 510-6.f.);

(e) Policies affecting assistance programs of two or more departments or agencies (see Section 510-6.g.); and

(e) Policies affecting assistance programs of two or more departments or agencies (see Section 510-6.g.); and

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(f) Clearance of reporting and recordkeeping required of the public.

(5) Ensuring that each applicable step in the procedures detailed in Sections 510-5 and 510-6, below, is carried out;

(6) Providing either directly or through OMB units, information and interpretations to agency officials after the directive has been issued, including issuing guidance; and

(7) Regularly reviewing the directive to see that it is up-to-date, and preparing revisions as necessary.

b. The Assistant Director for Administration is responsible for:

(1) Advising the Director on the need for a directive to be issued;

(2) Assuring that all directives meet the standards of content and format discussed below and are written clearly and concisely;

(3) Assuring that applicable administrative requirements are met in regard to:

(a) Executive Order 12291, Federal Regulation;

(b) National Archives and Records Service reporting;

(c) Consultations with unions;

(d) Intergovernmental consultation;

(e) Multi-agency assistance programs; and

(f) Clearance of public reporting and recordkeeping.

(e) Multi-agency assistance programs; and

(f) Clearance of public reporting and recordkeeping.

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(4) Maintaining a complete index of all formal OMB guidance currently in effect which is cross-referenced to internal instructions;

(5) Arranging for periodic reviews of OMB's directives to be made by the responsible divisions and for the responsible divisions to make recommendations to the Director on whether revisions, if any, are needed;

(6) Recommending to the Director whether there is a need to codify the directive in the Code of Federal Regulations; and

(7) Publishing a semi-annual agenda of OMB directives under development and review.

c. For all OMB directives except those of the Office of Federal Procurement Policy (OFPP) the Assistant Director for Administration is responsible for:

(1) Assigning the appropriate control number to each directive (see Attachment A);

(2) Maintaining current mailing lists for each type of directive;

(3) Assuring that copies of directives are distributed promptly; and

(4) Maintaining the official historical file on all directives;

d. For all OFPP directives the Administrator for Federal Procurement Policy is responsible for:

(1) Assigning the appropriate control number to each directive (see Attachment A);

(2) Maintaining current mailing lists for each type of directive;

(3) Assuring that copies of directives are distributed promptly;

(2) Maintaining current mailing lists for each type of directive;

(3) Assuring that copies of directives are distributed promptly;

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(4) Maintaining the official historical file on all directives; and

(5) Forwarding OFPP's agenda of directives under development or review to the Assistant Director for Administration for inclusion in the OMB regulatory agenda published semi-annually.

e. The General Counsel is responsible for:

(1) Ensuring that all proposed directives are consistent with existing statutes, Executive Orders, or other regulations having the effect of law; and

(2) Ensuring that all necessary statutory requirements and relationships are appropriately referenced and properly cited.

f. The Office of Information and Regulatory Affairs is responsible for reviewing proposed directives for compliance with Executive Order 12291, Federal Regulation, and the Paperwork Reduction Act of 1980 (P.L. 96-511).

510-5. Procedures.

General procedures. The following procedures are to be observed in preparing and issuing all directives. Additional instructions for particular types of directives are given in Section 510-6.

a. The responsible division determines the need for the directive and develops its contents and any other material needed, and performs any necessary coordination in regard to the responsibilities outlined in Section 510-4. Any request for written information from or instructions to ten or more agencies must be in the form of a formal directive.

b. Before preparing a final draft, the originating division consults with each unit in OMB likely to be affected by the directive and with the Assistant Director for Administration concerning the review outlined in Section 510-4.b. The division also

agencies must be in the form of a formal directive.

b. Before preparing a final draft, the originating division consults with each unit in OMB likely to be affected by the directive and with the Assistant Director for Administration concerning the review outlined in Section 510-4.b. The division also

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consults with affected agencies and outside parties when appropriate. When a preliminary draft of the proposed directive is prepared, it should be circulated to affected units and the Assistant Director for Administration.

c. Proposed Federal Procurement Policy Letters shall, at least 30 days prior to the effective date of any Policy Letter, be sent by OFPP to the Chairperson of the Senate Governmental Affairs Committee and the Chairperson of the House Government Operations Committee, together with the report required by Section 8(b) of P.L. 93-400 as amended by P.L. 96-83.

d. The originating division prepares an Abstract of Correspondence that includes at least the following information:

(1) The purpose of the proposed directive;

(2) The additional workload to be imposed on OMB, Federal agencies, the public, and others by the directive, and an outline of the justification for the additional workload;

(3) Identification of the agencies and OMB units consulted during the preparation of the proposed directive, in addition to those appearing on the list of concurrences; and

(4) Any related issues the Director should be aware of.

e. The final document should be routed to the Deputy Director and Director through:

(1) The head of any OMB division or office that shares responsibility for the directive or whose responsibilities are affected substantively by the directive;

(2) The Office of Information and Regulatory Affairs when the proposed directive impact regulatory or paperwork burden of the private sector, or State

the directive;

(2) The Office of Information and Regulatory Affairs when the proposed directive impact regulatory or paperwork burden of the private sector, or State

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and local governments or where covered by provisions of Executive Order 12291, Federal Regulation, or the Paperwork Reduction Act of 1980 (P.L. 96-511);

(3) The cognizant program division(s) and the Budget Review Division when the proposed directive will affect agency programs or the budget process;

(4) The General Counsel;

(5) The Associate Director or other senior policy officials to which the originating division reports;

(6) The Assistant Director for Administration; and

(7) The Executive Associate Director.

Simultaneously, information copies will be sent to:

(8) The Assistant Director for Public Affairs (in all cases);

(9) The Assistant Director for Legislative Reference (when legislative matters are involved);

(10) The Assistant Director for Civil Rights (when civil rights matters are involved); and

(11) The head of any other OMB division or office having provided substantive comments on, or having a known interest in, the guidance provided by the directive.

f. The originating division prepares in clear and concise English a Budget Procedures Memorandum (BPM) or other type of instruction to inform OMB personnel of the actions required or implied by the directive. The Budget Procedures Memorandum or other instruction should accompany the final issuance.

g. When the Director or Deputy Director has signed the document, it is given to the Budget Officer for dating, assignment of a control number, reproduction,

should accompany the final issuance.

g. When the Director or Deputy Director has signed the document, it is given to the Budget Officer for dating, assignment of a control number, reproduction,

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and distribution. The internal guidance prepared in step (f) will be distributed within OMB at the same time as the new directive, or as soon thereafter as possible when it cannot accompany the directive. If the Budget Procedures Memorandum cannot accompany the proposed directive, the abstract of correspondence should so state and indicate the date when such internal guidance will be issued.

510-6. Additional Procedures for Certain Directives

The following are special requirements for certain directives:

a. Executive Order 12291. A directive falling within the requirements of Executive Order 12291, Federal Regulation, is one designed to implement, interpret or prescribe law or policy or describe the procedure or practice requirements of an agency. Excluded from these requirements, however, are directives that outline procedures to be followed by the President's budget and legislative programs, or for matters affecting only the internal functions, management or personnel of Federal agencies.

When work is initiated on a new or revised directive (Circular, Bulletin or Federal Procurement Policy Letter), the responsible Associate Director or Administrator will so notify the Director. This notification will be routed through the Assistant Director for Administration and the General Counsel, and will include:

(1) A statement of the problem addressed by the directive and the means by which the problem was brought to the attention of OMB;

(2) The legal basis for issuance of the directive;

(3) The name of a "knowledgeable agency official," e.g., the OMB staff person responsible for handling inquiries;

(4) A statement as to whether or not it is a major rule, i.e., is likely to result in:

(3) The name of a "knowledgeable agency official," e.g., the OMB staff person responsible for handling inquiries;

(4) A statement as to whether or not it is a major rule, i.e., is likely to result in:

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(a) An annual effect on the economy of $100 million or more.

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

(5) A statement of the issue involved and the alternatives being explored; and

(6) A plan for developing the directive and the target dates for steps in the development process.

b. Publishing a Draft for Comment. Except in cases where an emergency situation or statutory deadline precludes it, directives subject to the provisions of Executive Order 12291, Federal Regulation, will be published in draft form for public comment in the Federal Register. Along with a summary of the background which has led to the directive, a determination of whether this directive is a major rule or not will also be published. If it is a major rule, then a preliminary regulatory impact analysis must be developed, and a summary of that analysis must be published with the proposed rule. Such an analysis should include:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the

cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the

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identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of their potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) A description of the impact of the proposed rule on small businesses, organizations and governmental jurisdictions.

If the sponsoring division determines the proposed directive is not a major rule, then the published notice will include a statement to that effect along with the reasons underlying that determination. Routing of the draft for publication will be through the General Counsel, Administrator, Office of Information and Regulatory Affairs and the Assistant Director for Administration.

c. Final Directives. Final directives will be published in the Federal Register along with a discussion of comments received during development of the directive. They will be routed for signature as described in Section 510-5(e). For all directives that are major rules, the published notice should include a clear indication that:

(1) The directive is within OMB's authority and is consistent with Congressional intent;

(2) The factual conclusions upon which the rule is based have substantial support, with full attention to public comments in general and the comments of persons directly affected by the directive in particular;

(2) The factual conclusions upon which the rule is based have substantial support, with full attention to public comments in general and the comments of persons directly affected by the directive in particular;

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(3) The potential benefits of the directive outweigh the potential costs to society, supported by a regulatory impact analysis; and

(4) The objective of the directive was chosen to maximize the net benefits to society, while the alternative approach selected involves the least net cost to society.

For all other directives, the final publication should include a statement that the directive is not a major rule, along with the reasons underlying that determination.

d. National Archives and Records Service. A directive falling within the requirements of the National Archives and Records Service (NARS) is one that is includes an interagency reporting requirement not of a budgetary, program review and coordination, or legislative clearance nature.

At the time work is initiated on such a directive the responsible program division will obtain from the Budget Officer a Standard Form 360, Request for Clearance of an Interagency Reporting Requirement (see the Exhibit to Attachment B).

The Budget Officer, serving as OMB's Interagency Reports Coordinator, in conjunction with the responsible program division, will then perform the following, as required by Federal Property Management Regulation (FPMR) 101-11.11:

(1) Discuss the proposed reporting requirement with NARS and NARS will:

(a) Verify management needs;

(b) Review for duplicative reporting;

(c) Determine potential availability of information;

(d) Where applicable, recommend sampling measures; and

(c) Determine potential availability of information;

(d) Where applicable, recommend sampling measures; and

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(e) Assess impact on respondents.

(2) Prepare the Standard Form 360 and supporting justification, and submit to NARS; and

(3) Upon NARS' approval, promulgate the directive, ensuring that the following information is included:

(a) Purpose of requirement;

(b) Report title;

(c) Interagency Report Control Number;

(d) Report format;

(e) Preparation instructions;

(f) List of responding agencies;

(g) Frequency;

(h) Number of copies;

(i) Routing;

(j) Due date; and

(k) Whether negative reports are required. (If the report requires a form for data collection, the Interagency Report Control Number shall appear on the form, preferably in the upper-right corner.)

e. Consultation with Unions. A directive requiring consultation with unions is one that proposes any substantial change in any condition of employment, including personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions (except to the extent each matter is specifically provided for by Federal statute). (There are certain management rights excluded from this provision, including the

whether established by rule, regulation, or otherwise, affecting working conditions (except to the extent each matter is specifically provided for by Federal statute). (There are certain management rights excluded from this provision, including the

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power to determine the mission, budget, organization, and number of employees of an agency.)

Whenever work is begun on a governmentwide issuance (such as a Circular, Bulletin, or Memorandum to Heads of Executive Departments and Establishments) that may fall under the consultation provision, the Federal Personnel Policy Division (FPPD) should be contacted for advice on the applicability of the requirement. The FPPD will handle requests from unions for consultation and will keep a current register of those unions granted such privileges. In order to avoid any delays, the FPPD should be provided copies of proposed issuances as early in the drafting process as possible. The FPPD will then make a determination regarding the need to consult with unions, help set up meetings, or directly participate in the consultation process as required.

f. Intergovernmental Consultation. All directives that may have identifiable effects (other than budgetary) on State or local governments will be coordinated with the Deputy Associate Director for Intergovernmental Affairs. This consultation should begin when a new or revised directive is being considered and continue through issuance.

g. Policies Affecting the Assistance Programs of Two or More Departments or Agencies. All directives that generally apply to the operation of the Federal assistance programs on a crosscutting basis will be coordinated with the Associate Director for Management. This coordination should begin when a new or revised directive is being considered and continue through issuance and any follow-on steps taken to guide implementation by the agencies.

510-7. Content and Format of Directives. (See Exhibit 510-1 for sample format.)

a. Circulars, Bulletins, and Federal Procurement Policy Letters shall contain, but not be limited to, the following sections:

a. Circulars, Bulletins, and Federal Procurement Policy Letters shall contain, but not be limited to, the following sections:

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(1) Purpose -- A brief statement of the reasons for or intention of the directive. Required citations should be given, but lengthy discussions of background should be avoided.

(2) Rescissions -- List previous directives, if any, rescinded by this issuance. (Note: If a Circular or Federal Procurement Policy letter is rescinded, there should always be a Transmittal Memorandum issued to that effect.)

(3) Authority -- Cite any statutory provisions or other authorities upon which the directive is based.

(4) Background -- Describe briefly the issue necessitating the issuance of the directive.

(5) Policy -- A brief statement of the general policy promulgated by the directive.

(6) Definitions -- Succinct definitions of each key term used in the guidance document which may be uncommon or subject to varying interpretations. This section should not contain any policy guidance. Care should be taken that the definitions do not conflict with interpretations given elsewhere in the directive, for example, in attached reporting instructions. If the same terms have been defined in other directives, the same definitions should be used wherever possible.

(7) Action Requirements -- Statements of responsibilities of agency officials for carrying out the policy. Separate sections should be used for reporting requirements and for the responsibilities of specific agencies. If the requirements are lengthy and detailed, only the basic responsibilities should be listed in the body of the directive, with details appearing in an attachment. However, each guidance document, together with its attachments, should be self-contained.

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only the basic responsibilities should be listed in the body of the directive, with details appearing in an attachment. However, each guidance document, together with its attachments, should be self-contained.

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(8) OMB Responsibilities -- A specific statement of the responsibilities of OMB in implementing and carrying out the policies expressed in the document.

(9) Information Contact -- The name of an OMB unit and a telephone number where further information can be obtained. The directive may state that further information may be obtained from the unit or person responsible for handling the agency's budget.

(10) Sunset Review Date -- The date by which the directive shall have a policy review. All Circulars and Federal Procurement Policy Letters should include a review date no later than three years from the date of issuance. In exceptional circumstances, a longer time period may be approved by the Director. This exception should be explained in the justification submitted in accordance with the requirements of Section 510-5. Bulletins shall have a termination date no later than one year from the date of issuance, and usually will terminate sooner. If the Bulletin requires a one-time action, the termination date may be stated "as soon as action is completed."

(11) Attachments -- If necessary, additional material, which is part of the guidance but is too detailed to include in the body of the document, may be added as an attachment. Examples are reporting forms and instructions, procedural handbooks, and lists.

b. Memoranda to Heads of Executive Departments and Establishments and Transmittal Memoranda should be brief and to the point, normally no more than one page long. Each must contain: (i) the name and telephone number of the OMB unit which can provide further information (or reference of the examining unit responsible for the agency), and (ii) a termination date or the legend, "This memorandum is rescinded as soon as the prescribed action is taken." Proposed exceptions to showing a termination date or

Sunset/~~Review~~ Review Date —
This Circular shall have a policy review no later than three years from date of issuance.

further information (or reference of the examining unit responsible for the agency), and (ii) a termination date or the legend, "This memorandum is rescinded as soon as the prescribed action is taken." Proposed exceptions to showing a termination date or

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Sunset/~~Review~~ Review Date —
This Circular shall have a policy review no later than three years from date of issuance.

legend should be explained in the justification submitted in accordance with the requirements of Section 510-5.

510-8. Sunset Reviews.

a. Sunset reviews shall be conducted no later than once every three years for Circulars and Federal Procurement Policy Letters. Bulletins and Memoranda will lapse after one year unless specific action is taken to extend them.

b. Sunset reviews should result in a memorandum and a draft of the revised directive from the responsible program division to the Director, routed as defined in Section 510-5(e). The memorandum should be brief and should discuss:

(1) The basic objective of the directive;

(2) Why the directive is still needed;

(3) If it is a major rule, a regulatory impact analysis; and

(4) If it is not a major rule, a statement to that effect, along with the reasons for that determination.

c. Responsible offices will notify the Assistant Director for Administration of plans for and the status of their sunset reviews in April and October for inclusion in the OMB regulatory agenda.

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Attachment A

Control Numbers for Directives

A. Circulars will be denoted by the letter "A" followed by a number assigned according to the sequence of initial issuance (A-111, A-112, etc.).

B. Bulletins and Federal Procurement Policy letters will be numbered in chronological order, by fiscal year (80-2, 80-3, etc.).

C. Memoranda to Heads of Agencies will be denoted by the letter "M" followed by the two-digit fiscal year and a number assigned according to the sequence of initial issuance (M-80-1, M-80-2, etc.).

D. Transmittal Memoranda are numbered chronologically by the control number of the directive they modify (Transmittal Memorandum No. 2 to Circular No. A-119).

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Attachment B
FPMR 101-11.11

Preparing Standard Form 360

Reporting Costs

The reporting costs of a reporting requirement are comprised of developmental costs, which are incurred by both requiring and responding agencies; operational costs, which are incurred only by responding agencies and user costs, which are incurred only by the requiring agency. The three categories of reporting costs are defined further below.

(a) Developmental costs result from those activities necessary for establishing a new reporting requirement or modifying an existing reporting requirement. Developmental costs include:

(1) Specification of reporting requirement;

(2) Analysis of reporting requirement;

(3) Design of reporting system; and

(4) Installation of reporting system.

(b) Operational costs result from those continuing activities necessary to prepare and transmit a report. Operational costs include:

(1) Data collection;

(2) All recordkeeping, data process, typing, data assembly and other operational steps needed to produce desired output; and

(3) Data transmission.

(c) User costs result from those normal activities performed by the requiring office on the transmitted information. User costs include:

(3) Data transmission.

(c) User costs result from those normal activities performed by the requiring office on the transmitted information. User costs include:

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(b) Factoring (estimate based on actual costs previously collected for a comparable report).	Medium to low cost reporting--revision of a previously costed report--high degree of experience with comparable reports made by same (one or a limited number) responding agencies--cost relatively easy to compare with actual costs for a similar report.
(c) Sampling (estimate based on a representative selection of responding agencies).	Low to high cost reporting--large number of respondents--new reports.
(d) Technical estimates (estimate based on experience).	Low cost reporting--more detailed costing has been waived by GSA--one time reports--limited number of respondents.

Benefits

(a) Each reporting requirement shall be justified in terms of its value to management. This value may be expressed in terms of (1) increased productivity, (2) more timely service, (3) better quality in output, or (4) reduced costs, and shall be evaluated in comparison to the developmental, operational, and user costs of a report.

(b) Evidence presented in the justification statement shall demonstrate that the value of the report outweighs its costs, and that implementation of the report is in the best interest of the Government. The justification shall be an attachment to the SF 360 and shall be signed by the agency official responsible for initiating the reporting requirement.

(c) The official signing the justification statement shall:

(1) Describe specifically how the information from the proposed report will be used. Generalizations such as "for better management," "to send to Congress," or "to discharge program responsibilities" are not appropriate.

(2) Describe the benefits that are expected from use of the information. Quantify the benefits and place a dollar value

(1) Describe specifically how the information from the proposed report will be used. Generalizations such as "for better management," "to send to Congress," or "to discharge program responsibilities" are not appropriate.

(2) Describe the benefits that are expected from use of the information. Quantify the benefits and place a dollar value

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(1) Refining, interpreting, and analyzing information received; and

(2) Reading, reviewing, discussing, and documenting information presented (hard copy report, briefing session, remote terminal response).

(d) Reporting costs include resources directly applied in reporting activities (personnel, equipment, material, and other) and overhead.

Cost Estimates

Cost-effectiveness measures and evaluations, including sampling techniques shall be employed to ensure that management's need for data or information warrants the costs incurred. Such evaluations shall use a costing alternative appropriate to the degree of accuracy and specificity that is actually needed to evaluate a particular requirement. Accordingly, the following costing alternatives may be used at the discretion of the requiring agency, subject to GSA/NARS review. These alternatives shall be used in conjunction with the procedures described in the "Guide to Estimating Reporting Costs" issued by the Office of Records Management, GSA/NARS. When sampling is to be used in obtaining the estimated costs of a report, the requiring agency should contact the General Services Administration (NRI) for guidance in determining which agencies will be included in the sample. Supporting documentation and worksheets for all cost estimates shall be available for GSA/NARS review.

Alternatives	Characteristics
(a) Pilot testing (estimate based on actual costs collected).	High cost reporting--full scale mechanized systems--data banks--large number of data elements--new data collection system--respondent costs may be needed for budget purposes.

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for budget purposes.

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on the benefits to the extent possible, and assess the probability that the benefits described will be realized.

(3) Describe the consequences that may be expected if the proposed report is not implemented.

(4) Identify responding agencies that participated in the design, pilot testing, and cost estimating of the proposed report.

(5) Identify agencies that concur and agencies that do not concur in the proposed report. Summarize the reasons cited by responding agencies for their nonconcurrences.

(6) Explain how the estimate of reporting costs shown on the SF 360 was derived. Include as an attachment, an Optional Form 101, Summary Worksheet for Estimating Reporting Costs, for the input of each agency that participated in the estimating process.

(7) Review the consideration that was given to alternative reporting plans in regard to each of the following:

(i) Frequency of reporting;

(ii) Use of exception reporting;

(iii) Use of sampling techniques;

(iv) Selection of respondents;

(v) Amount of detail; and

(vi) Format of report.

Waivers

If an agency cannot comply with all provisions of the justification requirements specified in Section 101-11.1106, the submission of the complete cost-effectiveness justification may be waived when, in the judgment of GSA, it would be in the interest of the Government to do so. A letter explaining the need for the report and providing the reasons for the waiver request shall be submitted instead of the justification statement with Standard Form 360, Request for Clearance of an Interagency

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be waived when, in the judgment of GSA, it would be in the interest of the Government to do so. A letter explaining the need for the report and providing the reasons for the waiver request shall be submitted instead of the justification statement with Standard Form 360, Request for Clearance of an Interagency

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Reporting Requirement. As a minimum, all waiver requests shall include a single summary cost figure in item 9, Summary of Estimated Reports Costs (s 101-11.1106-2(d)). This request will be responded to within 5 workdays after its receipt. If a request for waiver is denied, the justification statement shall be prepared under the procedures established above for clearance of the reporting requirement.

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REQUEST FOR CLEARANCE OF AN INTERAGENCY REPORTING REQUIREMENT

1. FOR GSA USE

a. Interagency Report Control No.

b. Currently assigned expiration date:

INSTRUCTIONS

Submit original and one copy together with one copy each of the proposed report, reporting directive and justification statement to GSA, NARS, Office of Records Management. See FPMR (CFR 41) 101-11.11 for further instructions.

2. NAME, ADDRESS AND ZIP CODE OF REQUESTING AGENCY

3. TITLE OF PROPOSED REPORTING REQUIREMENT

4. TYPE OF REQUEST

a. ☐ NEW
b. ☐ REVISION
c. ☐ EXTENSION *(No change)*
d. ☐ WAIVER

5. FREQUENCY OF USE

a. ☐ SINGLE TIME
b. ☐ ON OCCASION
c. ☐ WEEKLY
d. ☐ MONTHLY
e. ☐ QUARTERLY
f. ☐ SEMI-ANNUALLY
g. ☐ ANNUALLY
h. ☐ OTHER *(Specify)*

6. REVISIONS AND EXTENSIONS

a. Currently assigned Interagency Control No.

b. Currently assigned expiration date:

7. CANCELED OR MODIFIED REPORTS OR FORMS *(List by title and Interagency Report Control or OMB Approval Number any Reports and Forms to be canceled or modified by this Interagency Report)*

SUMMARY OF ESTIMATED REPORTING WORKLOAD

c. Number of responding agencies
b. Number of times this report submitted annually by each responding agency
c. Total number of reports submitted annually (a X b)
(Items d and e apply to Interagency Public Reports only)
d. Average number of man-hours required to prepare and transmit one report
e. Total number of man-hours required to prepare and transmit reports annually (c X d)

9. SUMMARY OF ESTIMATED REPORTING COSTS	REQUIRING AGENCY *(Col. 1)*	RESPONDING AGENCIES *(Col. 2)*	TOTAL *(Col. 1 + Col. 2)*
a. Developmental costs	$	$	$
b. Annual operational costs	XXXXXXXXX	$	$
c. Annual user costs	$	XXXXXXXXX	$

10. SIGNATURE OF INTERAGENCY REPORTS COORDINATOR

DATE

FOR GSA USE

11. DISPOSITION OF REQUEST BY GSA, NARS, OFFICE OF RECORDS MANAGEMENT

a. ☐ APPROVED
b. ☐ DISAPPROVED *(See attachment)*
c. ☐ RECOMMENDED MODIFICATION *(See attachment)*

REMARKS

SIGNATURE OF INTERAGENCY REPORTS MANAGEMENT OFFICER

DATE

STANDARD FORM 360
JULY 1973
PRESCRIBED BY GSA, FPMR (CFR 41) 101-11.11

FOR GSA USE

11. DISPOSITION OF REQUEST BY GSA, NARS, OFFICE OF RECORDS MANAGEMENT

a. ☐ APPROVED
b. ☐ DISAPPROVED *(See attachment)*
c. ☐ RECOMMENDED MODIFICATION *(See attachment)*

REMARKS

SIGNATURE OF INTERAGENCY REPORTS MANAGEMENT OFFICER

DATE

STANDARD FORM 360
JULY 1973
PRESCRIBED BY GSA, FPMR (CFR 41) 101-11.11

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

(Directive number and date will be inserted after signature by the Director.)

Bulletin No.
(or date, if Circular)

Circular No. A-
(or date, if Bulletin)

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Office of Management and Budget Directives System

1. Purpose.....
2. Rescission.....
3. Authority.....
4. Background.....
5. Coverage (optional; use only if coverage is exceptional).....
6. Policy.....
7. Definitions.....
8. Action requirements (Note appropriate indentation and use of alpha and numeric characters.)
   a. Appropriate Headings.....
      (1) Appropriate Headings.....
         (a) .....
         (b) .....
      (2) Appropriate Heading.....
   b. Appropriate Heading.....
9. OMB Responsibilities.....
10. Effective Date (optional; use only if different from issuance date).....
11. Information Contact.....
12. Sunset Review Date.....

.....
Approved, July 1991

b. Appropriate Heading.....
9. OMB Responsibilities.....
10. Effective Date (optional; use only if different from issuance date).....
11. Information Contact.....
12. Sunset Review Date.....

.....
Approved, July 1991

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 8, 1987

CIRCULAR NO. A-11
Revised
Transmittal Memorandum No. 58

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Preparation and Submission of Budget Estimates

OMB Circular No. A-11 provides detailed instructions and guidance on the preparation and submission of annual budgets and associated materials. The revised Circular transmitted by this memorandum reflects changes for the FY 1989 budget process and supercedes all previous versions.

The Circular has been extensively reorganized and edited. Background and explanatory information have been added to relate the instructions to the budget process and to clarify policies and reporting requirements.

This year's revision includes instructions on the Administration's Federal credit reform proposal and the treatment of programs financed by the Federal Financing Bank (FFB). These instructions modify the previous guidance provided for credit reform for the FY 1988 Budget.

Accounts in the national defense function and multifunction accounts with a national defense component may submit two-year budget requests. The potential application of biennial budgeting to other areas is currently under review. Specific instructions on the requirements for accounts affected by biennial budgeting will be provided later by OMB.

These and other significant changes are highlighted in the analysis of changes. Following the analysis of changes is a crosswalk between the old and new structure of the Circular.

James [illegible]er III
Director

Attachment

James [illegible]er III
Director

Attachment

Information on Research and Development

44.1. General.

Information on research and development programs, including technology transfer activities, is required for review of agency requests, Government-wide resource allocation, and preparation of the special analysis on research and development (R&D).

Reporting thresholds.—Agencies are required to report R&D information if the level of budget authority, obligations, or outlays for the agency exceeds the following thresholds for the past, current, or budget years:

—R&D levels exceeding $10 million require a consolidated R&D schedule and a narrative statement covering the activities of the whole agency.

—R&D levels exceeding $150 million require separate R&D schedules and narrative statements for each bureau or comparable organizational unit conducting R&D activity, as well as a consolidated schedule and narrative statement for the agency as a whole.

—Technology transfer levels exceeding $100 thousand for agencies with R&D levels of more than $10 million require a consolidated schedule on technology transfer activities and a narrative statement for the whole agency *and* a separate schedule covering *all* agency owned laboratories.

44.2. Definitions.

Research and development broadly covers the work performed by a Government agency or by private individuals or organizations under a contractual or grant arrangement with the Government. It includes R&D in all fields, including education and the social sciences, as well as the physical sciences, engineering, etc.

—*Research* is systematic study directed toward fuller scientific knowledge or understanding of the subject.

—*Development* is systematic use of the knowledge and understanding gained from research for the production of useful materials, devices, systems, or methods, including the design and development of prototypes and processes.

Research and development excludes routine product testing, quality control, mapping, collection of general purpose statistics, experimental production, routine monitoring and evaluation of an operational program, and the training of scientific and technical personnel.

This definition of research and development is the same as that used for the National Science Foundation Annual Survey of Federal Funds for Research, Development, and Other Scientific Activities. Information reported under this section should be reconcilable with the more detailed information subsequently reported in the annual survey.

Technology transfer broadly covers activities or programs designed specifically to make research and technology developed in Federal laboratories available to entities outside the Federal government or programs which have this as an important goal or result. Examples include specific cooperative R&D between industry and government; dissemination or outreach programs; and programs to encourage or promote the exchange of scientists and engineers between industry, government, and universities.

44.3. Material required.

An original and two copies of the following information is required. Some agencies, particularly those with large R&D programs, may also be requested by OMB to provide additional data aggregated at different levels of detail from those required below (e.g., Department of Defense, National Aeronautics and Space Administration, and Department of Health and Human Services).

The R&D and technology transfer schedules will cover PY through BY and will include, without separate identification, amounts proposed for supplementals, rescissions, or later transmittal.

Each schedule and narrative statement should have, in the lower right corner, the date of preparation and the name and telephone number of an individual responsible for answering questions concerning that schedule.

Revised materials, reflecting budget decisions and other changes in the initial submissions, should be submitted promptly after such decisions and changes have been made.

(a) R&D schedules.—A schedule summarizing agency R&D activities is required for each agency with R&D levels exceeding $10 million. This schedule will be prepared in the format of exhibit 44A. In addition, separate schedules are required for the R&D activities for each bureau or comparable unit when agencies have R&D levels exceeding $150 million.

or methods, including the design and development of prototypes and processes.

Research and development excludes routine product testing, quality control, mapping, collection of general purpose statistics, experimental production, routine monitoring and evaluation of an operational

with R&D levels exceeding $10 million. This schedule will be prepared in the format of exhibit 44A. In addition, separate schedules are required for the R&D activities for each bureau or comparable unit when agencies have R&D levels exceeding $150 million.

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The schedules will report obligations, budget authority, and outlays. Amounts will be reported in millions and tenths of millions. Amounts reported for outlays will equal the corresponding outlay amounts reported for R&D under BPS data section C (see section 21.3).

The entries on the following table will be used in reporting the data required for exhibit 44A. The codes listed should be included in the schedules submitted.

Entry	Code	Description
Basic research.	101	Systematic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind. Outlays reported here shall equal those reported under character classification code 1410 in BPS data section C (See section 21.3).
Applied research.	102	Systematic study to gain knowledge or understanding necessary for determining the means by which a recognized and specific need may be met. Outlays reported here shall equal those reported under character classification code 1420 in BPS data section C (See section 21.3).
Total research.	103	Sum of lines 101 and 102.
Development.	104	Systematic application of knowledge toward the production of useful materials, devices, and systems or methods; including design, development, and improvement of prototypes and new processes to meet specific requirements. Outlays reported here shall equal those reported under character classification code 1430 in BPS data section C (See section 21.3).
Total, conduct of R&D	199	Sum of lines 103 and 104. Includes all normal operating expenses, such as salaries, supplies, noncapitalized equipment and contractual services; excludes construction of facilities and other items reported under line 301, R&D facilities.
Conduct of R&D performed by colleges and universities.	201	Subset of the above total. Represents amounts for R&D performed by institutions engaged primarily in providing instruction for at least a 2-year program above the secondary school level. Included are colleges of liberal arts; schools of arts and sciences; professional schools (such as in engineering and medicine); affiliated hospitals and associated institutes; and agricultural experimental stations (excludes federally funded research and development centers).
R&D facilities.	301	Includes the acquisition, design, and construction of, or major repairs or alterations to all physical facilities for use in R&D activities. Facilities include land, buildings, and fixed capital equipment regardless of whether the facilities are to be used by the Government or by a private organization, and regardless of where title to the property may rest. Includes such fixed facilities as reactors, wind tunnels, and particle accelerators. Excluded from the R&D facilities category are expendable or moveable equipment (e.g., spectrometers, microscopes) and office furniture and equipment. Also excluded are the costs of pre-design studies (e.g., those undertaken before commitment to a specific facility). These excluded costs should be reported under Code 199, Total, conduct of research and development.

(b) Narrative statements on R&D activities.—A brief explanatory statement should accompany each R&D schedule, describing in general terms the R&D programs and objectives. The statement should explain increases and decreases in funding levels and major program, policy, or strategy changes expected to occur in the budget year.

The format and style of the statement should follow materials in the R&D special analysis in the latest budget. Generally, the narrative should begin with a paragraph addressing changes in the funding levels from the current year to the budget year and the reasons for this change, followed by a general overview of the R&D objectives of the organization and specific program objectives. In most instances, the narratives for individual bureaus should be restricted to two or three paragraphs, and the agency summary should not exceed two pages.

(c) Technology transfer schedules.—A schedule summarizing agency technology transfer data is required for each agency with R&D levels exceeding $10 million *and* technology transfer activities of more than $100 thousand. These schedules will be prepared in the format of exhibit 44B.

The following information will be submitted, with dollar amounts reported in thousands:

—funds allocated to support technology transfer;
—number of patent applications;
—number of patents awarded;
—number of licenses awarded;
—amount of royalties and other income received from all licenses;
—amount of royalties paid to inventors;
—amount of other cash awards paid to inventors; and
—number and value of all cooperative R & D agreements.

(d) Narrative statements on technology transfer activities.—A brief explanatory statement is required for each technology transfer schedule, describing in general terms the programs designed to promote or achieve the transfer of technology from their laboratories to the private sector. The statement should outline how these programs are expected to increase technology transfer, providing

stricted to two or three paragraphs, and the agency summary should not exceed two pages.

(c) Technology transfer schedules.—A schedule summarizing agency technology transfer data is required for each agency with R&D levels exceeding $10 million *and* technology transfer activities of

activities.—A brief explanatory statement is required for each technology transfer schedule, describing in general terms the programs designed to promote or achieve the transfer of technology from their laboratories to the private sector. The statement should outline how these programs are expected to increase technology transfer, providing

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examples where appropriate. The statement should also explain any significant increases or decreases in funding levels and major program, policy, or strategy changes expected to occur in the budget year. The format and style are at the agency's discretion. However, this narrative should not exceed two pages.

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TECHNOLOGY TRANSFER ACTIVITIES

PY = Past year
CY = Current year
BY = Budget year

TECHNOLOGY TRANSFER ACTIVITIES

DEPARTMENT OF GOVERNMENT
(in thousands of dollars)

	19PY	19CY	19BY
National Materials Laboratory:			
Amount allocated for technology transfer	120	130	135
Number of patent applications	40	25	35
Number of patents awarded	38	25	35
Number of licenses awarded	12	8	10
Amount of license royalties or other income	250	200	200
Amount of royalties paid to inventors	38	30	30
Amount of other cash awards paid to inventors	20	20	20
Number of cooperative R & D agreements	10	10	10
Value of cooperative R & D agreements	1,050	1,250	1,250
Center for Advanced Research:			
Amount allocated for technology transfer	500	500	600
Number of patent applications	90	90	100
Number of patents awarded	47	60	70
Number of licenses awarded	26	30	30
Amount of license royalties or other income	1,452	1,500	1,500
Amount of royalties paid to inventors	220	250	250
Amount of other cash awards paid to inventors	100	100	100
Number of cooperative R & D agreements	22	20	15
Value of cooperative R & D agreements	4,368	4,000	3,000
Agency Totals:			
Amount allocated for technology transfer	620	630	735
Number of patent applications	130	115	135
Number of patents awarded	85	85	105
Number of licenses awarded	38	38	40
Amount of license royalties or other income	1,702	1,700	1,700
Amount of royalties paid to inventors	258	280	280
Amount of other cash awards paid to inventors	20	20	20
Number of cooperative R & D agreements	32	30	25
Value of cooperative R & D agreements	5,418	5,250	4,250

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agreements 5,418 5,250 4,250

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