

# Rules and Regulations

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## FEDERAL LABOR RELATIONS AUTHORITY

### 5 CFR Part 2412

#### Privacy Act; New Exempt System of Records

**AGENCY:** Federal Labor Relations Authority (FLRA).

**ACTION:** Final rule.

**SUMMARY:** This final rule adds 5 CFR 2412.16 to exempt a system of records entitled "FLRA/OIG-1—Office of the Inspector General Investigative Files" from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a (j) and (k). By relieving the Office of the Inspector General (OIG) of certain restrictions, the exemptions will help ensure that the OIG may efficiently and effectively perform investigations and other authorized duties and activities.

**EFFECTIVE DATE:** July 19, 1991.

**FOR FURTHER INFORMATION CONTACT:** Paul D. Miller, Inspector General, FLRA, 500 C Street, SW., Washington, DC 20424, (202) 382-6002.

#### SUPPLEMENTARY INFORMATION:

Elsewhere in today's Federal Register, the FLRA is publishing the system notice for a new system of records, "FLRA/OIG-1, Office of the Inspector General Investigative Files" under the Privacy Act, 5 U.S.C. 552a, as amended. The FLRA published a proposed system notice for this system of records in the Federal Register on October 2, 1990 (55 FR 40237). Accompanying the proposed system notice was a proposed rule to exempt this system of records from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a (j) and (k). The proposed rule was also published in the Federal Register on October 2, 1990 (55 FR 40188).

Two comments were received in response to the proposed rule.

According to one commentator, it may not be appropriate to grant an exemption pursuant to 5 U.S.C. 552a(j)(2).

5 U.S.C. 552a(j)(2) allows for an exemption for files "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws." The commentator asserts that the FLRA's OIG does not perform as its principal function any activity pertaining to the enforcement of criminal laws, but suggests that an investigative subunit within the OIG may well do so. We do not agree with the commentator that the OIG does not perform as its principal function any activity pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, as amended, specifically mandates Inspectors General to investigate allegations of criminal violations and the FLRA's OIG does so. Moreover, the FLRA's OIG's Investigative Files are, in fact, maintained separately within the OIG, and are accessible only to those persons involved in the investigation and enforcement of criminal laws.

The second commentator suggests that proposed § 2412.16 (a) and (b) be modified in part to emphasize that only those files that are "solely" compiled for criminal investigation purposes or other law enforcement purposes are exempt under 5 U.S.C. 552a (j)(2) and (k)(2). The commentator suggests the changes "to protect the legal rights of individuals under the Privacy Act" and to avoid "excessive interference" "during an investigation, in the privacy rights of individuals." We have not adopted the proposed changes in the final rule. While we share the commentator's concern to protect the privacy rights of individuals and to guard against proscribed interference with those rights, adoption of the proposed changes is unnecessary, and could be misleading. Insofar as the proposed changes would merely reflect that the exemptions adhered to the legal limits on those exemptions set forth in sections (j)(2) and (k)(2) of the Privacy Act, the changes are unnecessary. Such limits are implicit in the regulations. Further, to the extent the proposed changes could be read to reflect a discretionary decision not to use information originally collected for purposes set forth in sections (j)(2) and (k)(2) for

other, legally permissible purposes, the changes would not accurately reflect the intent behind the regulations, and could be misleading.

Upon further consideration, we also clarify our view of the breadth of the (j)(2) exemption, discussed in the Supplementary Information accompanying the proposed rule (55 FR 40188). Specifically, we interpret the wording of the (j)(2) exemption to limit exemptible information to that indicated in 5 U.S.C. 552a(j)(2).

This rule has been reviewed under Executive Order No. 12291 and has been determined not to be a "major rule," since it will not have an annual effect on the economy of \$100 million or more. In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 5 CFR Part 2412

Privacy.

For the reasons set forth above, 5 CFR, chapter XIV, subchapter B, part 2412, is amended as follows:

#### PART 2412—PRIVACY

1. The authority for part 2412 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 2412.16 is added as follows:

#### § 2412.16 Exemptions.

(a) *OIG files compiled for the purpose of a criminal investigation and for related purposes.* Pursuant to 5 U.S.C. 552a(j)(2), the FLRA hereby exempts the system of records entitled "FLRA/OIG-1, Office of Inspector General Investigative Files," insofar as it consists of information compiled for the purposes of a criminal investigation or for other purposes within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, except for subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), (11) and (i).

(b) *OIG files compiled for other law enforcement purposes.* Pursuant to 5 U.S.C. 552a(k)(2), the FLRA hereby exempts the system of records entitled, "FLRA/OIG-1, Office of Inspector General Investigative Files," insofar as it consists of information compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), from the application of 5

U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

Dated: July 15, 1991.

Solly J. Thomas, Jr.,  
Executive Director.

[FR Doc. 91-17268 Filed 7-18-91; 8:45 am]

BILLING CODE 6727-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 91-096]

#### Peach Fruit Fly; Removal of Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that removed the peach fruit fly regulations that designated a portion of Orange County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. We have determined that the peach fruit fly has been eradicated from Orange County, California, and the regulations are no longer necessary.

**EFFECTIVE DATE:** August 19, 1991.

**FOR FURTHER INFORMATION CONTACT:** Michael B. Stefan, Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule effective April 4, 1991, and published in the *Federal Register* on April 10, 1991 (56 FR 14459-14460, Docket Number 91-043), we amended the "Domestic Quarantine Notices" in 7 CFR part 301 by removing the "Peach Fruit Fly" regulations (7 CFR 301.96 through 301.96-10). These regulations designated a portion of Orange County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from the area in order to prevent the spread of the peach fruit fly to noninfested areas of the United States. We have determined that the peach fruit fly has been eradicated from Orange County, California, and the regulations are no longer necessary. Comments on the interim rule were required to be received on or before June 10, 1991. We did not receive any comments. The facts presented in the

interim rule still provide a basis for this rule.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect 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.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The regulation affirmed by this action affects the interstate movement of regulated articles from a portion of Orange County, California. Within the previously regulated area there are approximately 330 small entities that may be affected, including retail outlets, wholesalers, a processor, a packing house, fruit stands, swap meets, mobile vendors, a farmers market, nurseries, and a commercial grower of cucumbers.

The effect of this rule on these entities should be insignificant since most of the small entities handle regulated articles primarily for intrastate movement, and were not affected by the regulatory provisions we removed.

The effect of the regulations on those few persons who moved regulated articles interstate was minimized by the availability of a treatment that in most cases permitted the interstate movement of regulated articles with very little additional cost. Also, many of these entities sell other items in addition to the previously regulated articles. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This rule contains no information collection or recordkeeping

requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

#### List of Subjects in 7 CFR Part 301

Agriculture commodities, Peach fruit fly, Plant diseases, Plant pests, Plant (Agriculture), Quarantine, Transportation.

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and was published at 56 FR 14459-14460 on April 10, 1991.

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51 and 371.2(c)

Done in Washington, DC, this 16th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-17224 Filed 7-18-91; 8:45 am]

BILLING CODE 3410-34-M

#### Commodity Credit Corporation

##### 7 CFR Part 1475

#### Emergency Livestock Assistance

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to adopt as a final rule, with certain changes which will enhance the effectiveness of the programs, a proposed rule which was published in the *Federal Register* on March 6, 1990 (55 FR 7905). This final rule amends the regulations at 7 CFR part 1475, to set forth the regulations for the livestock emergency programs conducted by the Commodity Credit Corporation (CCC). The final rule provides a simplified method of obtaining these programs with respect to: (1) Computing feed needs for eligible livestock; (2) determining feed on hand; and (3) determining owner eligibility.

**EFFECTIVE DATE:** July 19, 1991.

**FOR FURTHER INFORMATION CONTACT:** Harry D. Millner, Program Specialist,