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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Privacy Act Regulations

AGENCY: Office of the Secretary, Agriculture.

ACTION: Final rule.

SUMMARY: This rule exempts four systems of records from certain sections of the Privacy Act (5 U.S.C. 552a) pursuant to U.S.C. 552a(j). The previous list of exempt systems published in the **Federal Register** at 54 FR 39517, September 27, 1989, was omitted inadvertently from 7 CFR 1.122. In addition, this rule changes the list of Office of Inspector General (OIG) systems of records covered under those sections to reflect changes in the names of two of the systems of records, to add a third system which is being split-off from one of the other systems, and to include the investigative records portion of a fourth system.

These amendments are being made in conjunction with the notice of amendments to the USDA/OIG systems of records which is published elsewhere in today's issue of the **Federal Register**.

DATES: Effective November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Paula F. Hayes, Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, USDA, Washington, D.C. 20250–2310 (202–720–6979).

SUPPLEMENTARY INFORMATION: OIG has revised its systems of records in order to more accurately meet its recordkeeping practices and needs. The system formerly know as USDA/OIG–2, ''Intelligence Records,'' has been redesignated as ''Informant and Undercover Agent Records.'' The system previously designated as USDA/OIG–3 ''Investigative Files and Subject/Title Index,'' has been divided into two systems to be known as USDA/OIG–3, ''Investigative Files and Automated Investigative Indices System'' and USDA/OIG–4, ''OIG Hotline Complaint Records.'' And USDA/OIG–5, known as ''Management Information and Data Analysis System,'' has been renamed ''Consolidated Assignments, Personnel Tracking, and Administrative Information Network (CAPTAIN).''

These changes are not considered substantive because the basic records covered by the exemptions in 7 CFR 1.22 and 1.123 remain the same as before. The justifications for these exemptions were published as a proposed rule at 54 FR 11204–11206, March 17, 1989, and were further explained in a final rule published at 54 FR 39517, September 27, 1989.

The exemption revision applies to four Privacy Act systems of records: USDA/OIG–2, ''Informant and Undercover Agent Records;'' USDA/OIG–3, ''Investigative Files and Automated Investigative Indices System;'' USDA/OIG–4, ''OIG Hotline Complaint Records;'' and the Investigations Subsystem and Investigative Employee Time Records portions of USDA/OIG–5, ''Consolidated Assignments, Personnel Tracking, and Administrative Information Network (CAPTAIN).''

Pursuant to 5 U.S.C. 552a(k)(2), (5) and 552a(j)(2), exemption of records in four systems of records of OIG, USDA/OIG–2, USDA/OIG–3, USDA/OIG–4, and the Investigations Subsystem and Investigative Employee Time Records portions of USDA/OIG–5, is authorized to the extent that information in the systems pertains to criminal law enforcement. This includes, but is not limited to information complied for the purpose of identifying criminal offenders and alleged offenders and consisting of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; information compiled for the purpose of a criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual; or reports of enforcement of the criminal laws from arrest or indictment through release from supervision.

The disclosure of information contained in the criminal investigative files, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable suspects to take such action as is necessary to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, or retained would significantly impede the effectiveness of OIG investigatory activities, and in addition could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

Information in these systems is maintained pursuant to official Federal law enforcement and criminal investigation functions of the Office of Inspector General. The exemptions are needed to maintain the integrity and confidentiality of criminal investigations, to protect individuals from harm, and for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since these systems of records are being exempted from subsection (d) of the Act, concerning access to records, this section is inapplicable to the extent that these systems of records will be exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him/her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in these systems of records could inform the subject of an investigation of an actual or potential criminal violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his/her activities, or the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective law enforcement, OIG investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation or the existence of the investigation, thereby enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person to whom it ask to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information and of the effects on the person, if any, of not providing all or any part of the requested information. The application of the provision could provide the subject of an investigation with substantial information about the nature of that investigation, which could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) requires an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual, at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record, and how to contest its content. Since these systems of records are being exempted from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that these systems of records will be exempted from subsection (f) and (d) of the Act. Although the systems would be exempt from these requirements. OIG has published information concerning its notification, access, and contest procedures because, under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his/her records in these systems of records.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a **Federal Register** notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although the systems will be exempt from this requirement, OIG has published such a notice in broad generic terms.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines ''maintain'' to include the collection of information, complying with this provision could prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which seems unrelated, irrelevant, or incomplete when collected can take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(10) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to

serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. a(f)(1) requires an agency to promulgate rules which shall establish procedures where by an individual can be notified in response to his/her request if of any system of records named by the individual contain a record pertaining to him/her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation were able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since these systems would be exempt from subsection (d) of the Act, concerning access to records, the requirements of subsection (F)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable to the extent that these systems of records will be exempted from subsection (d) of the Act. Although these systems would be exempt from the requirements of subsection (f) of the Act, OIG has promulgated rules which establish Agency procedures because under certain circumstances, it could be appropriate for an individual to have access to all or a portion of his/her records in these systems of records.

(12) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since these systems of records would be exempt from subsections (c)(3) and (4), d, e(1), (2), (3) and 4(G) and (H), (e)(1) through (5) and (8) and (f) of the Act, the provisions of subsection (g) of the Act would be inapplicable to the extent that these systems of records will be exempted from those subsections of the Act.

Under 5 U.S.C. 552a(j)(2), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws and which consists of:

(a) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(b) Information compiled for the purpose of a criminal investigation including reports of informants and investigators, and associated with an identifiable individual; or

(c) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

Under 5 U.S.C. 552a(k) the head of an agency may exempt any system of records if the system of records is investigatory material within the scope of subsection (j)(2). Section 552(a)(k)(2) provides for the exemption of investigative material compiled for law enforcement purposes, provided however that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled to by Federal law, or for which he could otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Exemption under 552a(k)(2) is necessary to the extent the records constitute investigatory material compiled for law enforcement purposes, to protect the investigatory process, and protect the identity of a confidential source. 552(a)(k)(5) allows for the exemption of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service. Exemption under 552(a)(k)(5) is necessary to the extent that the disclosure of such material would reveal the identity of a confidential source and to maintain access to sources necessary in making determinations of suitability for employment.

USDA/OIG–2, USDA/OIG–3, USDA/OIG–4, and the Investigations Subsystem and Investigative Employee Time Records portions of USDA/OIG–5, contain information of the type described above and are maintained by the Office of Inspector General, a component of USDA which performs as one of its principal functions activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the Office of Inspector General is the Inspector General Act of 1978, 5 U.S.C. app. 3. That legislation authorizes the Office of Inspector General to conduct investigations relating to programs and operations of the Department of Agriculture.

The list of exempt systems contained in the **Federal Register** document at 54 FR 39517, September 27, 1989, and proposed at 59 FR 51389, October 11, 1994, is amended by this document.

List of Subject in 7 CFR Part 1

Privacy.

For the reasons set out in the preamble, 7 CFR, subtitle A, part 1, subpart G is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart G—Privacy Act Regulations

1. The authority citation for subpart G continues to read as follows:

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

2. Sections 1.122 is amended by revising the list of exempt systems of records for the Office of Inspector General and 1.123 by adding the list of exempt systems of records for the Office of Inspector General to read as follows:

§ 1.122 General exemptions.

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Office of Inspector General

Informant and Undercover Agent Records, USDA/OIG–2.

Investigative Files and Automated Investigative Indices System, USDA/OIG–3.

OIG Hotline Complaint Records, USDA/OIG–4.

Consolidated Assignments, Personnel Tracking, and Administrative Information Network (CAPTAIN), USDA/OIG–5.

§ 1.123 Specific exemptions.

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Office of Inspector General

Informant and Undercover Agent Records, USDA/OIG–2.

Investigative Files and Automated Investigative Indices System, USDA/OIG–3.

OIG Hotline Complaint Records, USDA/OIG–4.

Consolidated Assignments, Personnel Tracking, and Administrative Information Network (CAPTAIN), USDA/OIG–5.

* * * * *

Done at Washington, DC., this 3rd day of November 1997.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 97–29606 Filed 11–14–97; 8:45 am]

BILLING CODE 3410–23–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–061–2]

RIN 0579–AA85

Interstate Movement of Imported Plants and Plant Parts

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing a new generic domestic quarantine notice. This domestic quarantine notice provides that, subsequent to their importation, foreign plants and plant parts prohibited under our foreign quarantine notices from being imported into certain States or areas are also prohibited from being moved interstate into those States or areas. This action will clarify and strengthen our ability to enforce restrictions on the movement in commerce of imported plants and plant parts that present a risk of introducing foreign plant pests and diseases. In conjunction with this action, we are also removing a domestic quarantine notice that prohibits certain interstate movements of Unshu oranges, subsequent to their importation into the United States, because the new domestic quarantine notice makes a specific one for Unshu oranges unnecessary.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

The regulations at title 7, part 301, of the Code of Federal Regulations (CFR) contain domestic quarantine notices designed to prevent the spread of certain plant pests and diseases through the interstate movement of regulated articles. The regulations at 7 CFR 319 contain foreign quarantine notices designed to prevent the introduction of foreign plant pests and diseases through the importation of regulated articles into the United States.

Some of the foreign quarantine notices in part 319 include destination restrictions for specified imported plants and plant parts. That is, these notices allow specified foreign plants or plant parts to be imported into some parts of the United States but not into other specified States or areas because movement into those States or areas could present a plant pest or disease risk. However, only one domestic quarantine notice (7 CFR 301.83, ''Subpart-Unshu Oranges'') prohibits the subsequent movement of an imported plant or plant part into or through certain portions of the United States based on importation restrictions specified in a foreign quarantine notice (7 CFR 319.28, ''Subpart-Citrus Fruit'').

On October 2, 1996, we published in the **Federal Register** (61 FR 51376–51377, Docket No. 96–061–1) a proposal to amend the regulations in title 7 by establishing a new generic domestic quarantine notice in part 301. We stated that the proposed quarantine notice would prohibit the subsequent interstate movement of imported plants and plant parts into or through areas identified in a foreign quarantine notice as being a prohibited destination for the imported plants and plant parts.

In conjunction with the action just described, we also proposed to remove the domestic quarantine notice, ''Subpart-Unshu Oranges,'' contained in § 301.83. As mentioned previously, that subpart serves to reinforce the destination restrictions for imported Unshu oranges specified in the foreign quarantine notice ''Subpart-Citrus Fruit.'' The establishment of the generic domestic quarantine notice described above would make the prohibitions in ''Subpart-Unshu Oranges'' redundant and, therefore, no longer necessary.

We solicited comments concerning our proposal for 45 days ending November 18, 1996. We received four comments by that date. They were from an industry group, a scientific organization, and two State governments.

While we will discuss specific comments below, we believe several of the concerns expressed in the comments stemmed from confusion about the language we used in the proposed domestic quarantine notice. We regret any misunderstanding that resulted from the proposal as written and will attempt to explain more clearly in this document our goal in promulgating this regulation. We also are revising the proposed regulatory language to clarify it.

To begin, we would like to emphasize that this generic domestic quarantine notice adds no new quarantine restrictions; it simply reiterates in the domestic quarantine notices (title 7, part 301) restrictions that are already stated in the foreign quarantine notices (title 7, part 319). Therefore, this notice will have no effect on the legal importation or interstate transport of foreign plants or plant parts. What this domestic quarantine notice will do is clarify that shipping an imported plant or plant part interstate to an area of the United States that is a prohibited destination for that plant or plant part under a foreign quarantine notice is a violation of Federal regulations. Because this notice clearly states that such interstate movement of certain imported plants and plant parts is prohibited, we believe that this notice strengthens our ability to take regulatory action against persons who engage in such prohibited interstate transport.

This new quarantine notice logically places any regulations setting forth restrictions on the interstate movement of imported plants and plant parts in the domestic quarantine notices in part 301 of the regulations instead of in the foreign quarantine notices in part 319. Any member of the public who might check the CFR to determine whether the domestic movement of an imported plant or plant part is prohibited or restricted could not reasonably be expected to look for that information in the foreign quarantine notices. Placing this quarantine notice and prohibition on interstate movement in a more logical position in the CFR will increase public awareness of and accessibility to these restrictions in the regulations.

Specific Concerns

One commenter expressed concern that the language in the proposed domestic quarantine notice was ''vague and confusing and could easily result in misinterpretation as to its intent, especially where it states that the limited distribution areas are essentially quarantined areas.''

As our proposal was worded, areas of the United States into which a plant or plant part may be imported under part 319 would be quarantined with respect to that plant or plant part; all other areas of the United States would not be quarantined with respect to that plant or plant part, and movement of the plant or plant part would be prohibited into nonquarantined areas.

We recognize that designating as ''quarantined areas'' the States and areas into which the foreign plants or plant parts may move could be confusing to some people. Under many plant pest