

## § 3512. Public protection

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter [44 USCS § § 3501 et seq.] if--

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter [44 USCS § § 3501 et seq.]; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

**HISTORY:**

(Added May 22, 1995, P.L. 104-13, § 2, 109 Stat. 181; Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

## Explanatory notes:

The amendment made by § 1 of Act Oct. 30, 2000, P.L. 106-398, is based on § 1064(b) of Subtitle G of Title X of Division A of H.R. 5408 (114 Stat. 1654A-275), as introduced on Oct. 6, 2000, which was enacted into law by such § 1.

A prior § 3512 (Act Dec. 11, 1980, P.L. 96-511, § 2(a), 94 Stat. 2822) was omitted in the general revision of this chapter by Act May 22, 1995, P.L. 104-13, § 2, 109 Stat. 163, effective as provided by § 4 of such Act, which appears as 44 USCS § 3501 note. The prior section provided for public protection.

Another prior § 3512 (Act Nov. 16, 1973, P.L. 93-153, Title IV, § 409(b), 87 Stat. 593), which provided information for independent regulatory agencies, was omitted in the general revision of this chapter by Act Dec. 11, 1980, P.L. 96-511, § 2(a), 94 Stat. 2812, effective April 1, 1981, as provided by § 5 of such Act.

## Effective date of section:

This section became effective on October 1, 1995, with certain exceptions, as provided by § 4 of Act May 22, 1995, P.L. 104-13, which appears as 44 USCS § 3501 note.

## Amendments:

2000. Act Oct. 30, 2000 (effective 30 days after enactment, as provided by § 1065 of H.R. 5408, as enacted into law by such Act, which appears as 44 USCS § 3531 note), substituted "subchapter" for "chapter" wherever appearing.

**NOTES:**

## Code of Federal Regulations:

Small Business Administration--Administration, 13 CFR Part 101.

## Related Statutes &amp; Rules:

This section is referred to in 15 USCS § 57b-2; 31 USCS § 3811.

## Research Guide:

## Federal Procedure:

2 Fed Proc L Ed, Administrative Procedure § 2:66.

## Am Jur:

37A Am Jur 2d, Freedom of Information Acts § 145.

45B Am Jur 2d, Job Discrimination § 1641.

## Forms:

17 *Bender's Federal Practice Forms, Form CrR34:2*, Federal Rules of Criminal Procedure.

## Annotations:

Construction and Application of Paperwork Reduction Act of 1980 (PRA), 44 U.S.C.A. § § 3501 et seq. [44 USCS § 3501 et seq.]. 200 ALR Fed 173.

## Law Review Articles:

Lubbers. Paperwork redux: the (stronger) Paperwork Reduction Act of 1995, 49 *Admin L Rev* 111, Winter 1997.

## Interpretive Notes and Decisions:

1. Generally 2. Effect of noncompliance, generally 3. Tax matters

**1. Generally**

Under Paperwork Reduction Act of 1980 (44 USCS § § 3501 et seq.), forms provided by government agencies for collection of information must conform to certain standards; defendant in administrative enforcement action cannot raise affirmative defenses which have not been raised in administrative proceeding, and affirmative defense that forms were not in compliance with applicable standards does not preclude enforcement where government sought relief only for periods in which report forms carried control numbers under 44 USCS § 3512. *Navel Orange Administrative Committee v Exeter Orange Co.* (1983, CA9 Cal) 722 F2d 449, 14 *Fed Rules Evid Serv* 1286, 74 ALR Fed 265.

Fact that IRS summonses were issued on IRS Form 2029 without Office of Management and Budget control number, as allegedly required by 44 USCS § 3512, was not valid basis for quashing summonses. *Faber v United States* (1999, WD Mich) 69 F Supp 2d 965, 99-2 USTC P 50593, 83 AFTR 2d 2764.

Paperwork Reduction Act, 44 USCS § 3512, does not create private right of action; 44 USCS § 3512 is only defense to enforcement actions. *Ass'n of Am. Physicians & Surgs., Inc. v United States HHS* (2002, SD Tex) 224 F Supp 2d 1115, affd (2003, CA5 Tex) 67 Fed Appx 253.

Paperwork Reduction Act does not incorporate money-mandating provision, either mandatory or permissive, into its statutory language, does not reference or indicate any intent to include such provision, and does not create entitlement in any individual or entity to collect money from sovereign automatically or upon completion of responsibility or fulfillment of duty; fact that Congress opted not to incorporate money-mandating provision in Act is significant, and results in absence of waiver of sovereign immunity to allow lawsuits premised upon Act to be brought in Court of *Federal Claims*. *Pacific Nat'l Cellular v United States* (1998) 41 Fed Cl 20.

**2. Effect of noncompliance, generally**

Convictions for residing and working on unpatented mining claim without having sought, filed for, or obtained permit (Plan of Operations) from Forest Service would be reversed since Plan of Operations filing requirement lacked current control number. *United States v Smith* (1989, CA9 Alaska) 866 F2d 1092, 106 OGR 165.

Since Forest Service did not comply with PRA when it required miner to file operations plan, miner could not be subject to any penalty and information therefore failed to charge offense. *United States v Hatch* (1990, CA9 Nev) 919 F2d 1394, 90 CDOS 8577.

Paperwork Reduction Act does not protect individual against prosecution for making false statements on government forms. *United States v Sasser* (1992, CA10 Okla) 974 F2d 1544, 36 *Fed Rules Evid Serv* 830, cert den (1993) 506 US 1085, 122 L Ed 2d 368, 113 S Ct 1063.

PRA's 1995 amendments allowing any adversely affected person to raise PRA violations without limitation, so long as administrative or judicial process in connection with particular license of application continues, was properly applied to cellular telephone service provider's application for license in ongoing proceedings on remand; amendments govern only conduct of litigation after their effective date and do nothing to reopen matters litigated before then, hence does not offend any norm against retroactive lawmaking. *Saco River Cellular v FCC* (1998, App DC) 328 US App DC 162, 133 F3d 25, cert den (1998) 525 US 813, 142 L Ed 2d 37, 119 S Ct 47.

Airbag manufacturers' submissions to National Highway Traffic Safety Administration could not be considered mandatory for purposes of analyzing applicability of FOIA exemption 4, since agency failed to obtain prior approval from OMB for its request form, hence request, which on its face appeared to be mandatory, was not enforceable. *Ctr. for Auto Safety v Nat'l Highway Traffic Safety Admin.* (2001, App DC) 345 US App DC 248, 244 F3d 144, 58 USPQ2d 1294.

Japanese nonimmigrant visitor may not defend against charges of falsifying criminal record on visa application by citing lack of OMB control number on application, even though 44 USCS § 3512 precludes penalty against any person "for failing to provide information" to agency on information collection request not displaying current control number, because legislative history clarifies that § 3512 was intended to protect only nonfeaseor bombarded by unauthorized forms, not malfeaseor or fraudfeaseor who gives false information on unauthorized form. *United States v Takeo Matsuo* (1991, DC Hawaii) 756 F Supp 1361.

Airplane parts importer lacks standing to maintain claim under Paperwork Reduction Act (44 USCS §§ 3501 et seq.), where importer challenges investigatory circular or questionnaire distributed to its customers by federal agencies, because importer was not asked to provide information and asserts no direct injury from alleged failure to comply with § 3512. *Wag-Aero, Inc. v United States* (1993, ED Wis) 837 F Supp 1479, affd without op (1994, CA7 Wis) 1994 US App LEXIS 27856.

### 3. Tax matters

Act does not apply to statutory requirement to file income tax return, but only to forms themselves, so that tax pro-  
testor's claim of ineffective assistance of counsel for failing to raise implications of Act was meritless. *United States v Wunder* (1990, CA6 Ohio) 919 F2d 34, 90-2 USTC P 50575, 67 AFTR 2d 552.

Statute does not apply to statutory requirement that taxpayer must file return. *United States v Kerwin* (1991, CA5 Tex) 945 F2d 92, 91-2 USTC P 50547, 68 AFTR 2d 5753.

IRS investigation of taxpayer's failure to file income tax return constitutes agency action against specific individuals, hence summons were valid even absent either OMB number or statement that document request was not subject to requirements of § 3512. *United States v Saunders* (1991, CA9 Or) 951 F2d 1065, 91 Daily Journal DAR 15334, 92-1 USTC P 50055, 69 AFTR 2d 331.

Act did not bar prosecution for income tax evasion; it is irrelevant that Treasury regulation stating where income tax returns must be filed does not have OMB control number since Congress created duty to file returns and did not condition it on any Treasury regulation. *United States v Neff* (1992, CA11 Fla) 954 F2d 698, 69 AFTR 2d 788, 6 FLW Fed C 135.

PRA is not applicable to IRS instruction booklets, which merely assist taxpayer in filling out tax forms, rather than independently request information from taxpayer. *United States v Ryan* (1992, CA7 Ill) 969 F2d 238, 36 Fed Rules Evid Serv 148, 71 AFTR 2d 1731.

Failure to display expiration date on tax return form does not violate Act since, even if Act requires expiration date, form was expressly designated "1981" tax return which is sufficient to satisfy such requirement. *Salberg v United States* (1992, CA7 Ill) 969 F2d 379, 92-2 USTC P 50490, 70 AFTR 2d 5345.

Requirement of 44 USCS § 3512 that forms contain Office of Management and Budget number does not apply to collection of information during course of administrative action where investigation is against specific individuals or entities by operation of 44 USCS § 3518; process of assessment and collection of taxes appropriately falls within exception of 44 USCS § 3512. *Cameron v IRS* (1984, ND Ind) 593 F Supp 1540, 84-2 USTC P 9845, 54 AFTR 2d 6260, affd (1985, CA7 Ind) 773 F2d 126, 85-2 USTC P 9661, 56 AFTR 2d 5851.

Internal Revenue Service documents are not required to carry Office of Management and Budget numbers to be valid under 44 USCS § 3512. *Snyder v IRS* (1984, ND Ind) 596 F Supp 240, 84-2 USTC P 9894, 40 FR Serv 2d 496, 54 AFTR 2d 6425.

Accused tax evaders are not entitled to acquittal due to federal income tax instruction booklets' lack of OMB control numbers, although 44 USCS § 3512 does prohibit penalties if information collection request does not display current control number, because tax forms--not instruction booklets--are "information collection requests" requiring OMB control numbers. *United States v Stiner* (1991, DC Kan) 765 F Supp 663, 68 AFTR 2d 5696, affd without op (1992, CA10) 952 F2d 1401.

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Criminal prosecution for tax evasion will not be dismissed for IRS's failure to display OMB control numbers or expiration dates on its Form 1040 instruction booklet and implementing regulations, because Congress did not intend IRS regulations and instruction booklets to be "information collection requests" within meaning of 44 USCS § 3512. *United States v Burdett* (1991, ED NY) 768 F Supp 409, affd (1992, CA2 NY) 962 F2d 228, 92-2 USTC P 50337, 35 Fed Rules Evid Serv 803, 69 AFTR 2d 1263.

Tax dodger is not entitled to dismissal of indictment for failure to file income tax returns for 1984 through 1987, even if IRS regulations for 1984 contain no Paperwork Reduction Act (44 USCS § § 3501 et seq.) control numbers and 1985, 1986 and 1987 regulations lack expiration dates, where duty to file income tax returns is found in 26 USCS § 6012(a)(1)(A) and control numbers with expiration dates are required on tax forms, not regulations, because penalty bar at 44 USCS § 3512 is inapplicable. *United States v Pottorf* (1991, DC Kan) 769 F Supp 1176.

Tax evader's prosecution need not be abandoned, despite absence of OMB control number on 1040 instruction booklets, because Form 1040 contains number and instruction booklet is merely attendant part of one "information collection request" not requiring or entitled to separate control number, so that 44 USCS § 3512 bar to prosecution is not applicable. *United States v Schweitzer* (1991, DC Mont) 775 F Supp 1355.

Pro se taxpayer's action against IRS must be dismissed, where IRS has filed tax lien against her, and she seeks permanent injunction invalidating lien on basis that IRS's request for her 1991 tax information, and its notice of intent to levy, bore no OMB control number as required, because neither 44 USCS § 3512 nor related regulations provide for relief or remedy sought. *Woods v Commissioner* (1998, MD Fla) 8 F Supp 2d 1357, 84 AFTR 2d 6396, 11 FLW Fed D 795.