

44 USCS § 3518

§ 3518. Effect on existing laws and regulations

(a) Except as otherwise provided in this subchapter [44 USCS § § 3501 et seq.], the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this subchapter [44 USCS § § 3501 et seq.].

(b) Nothing in this subchapter [44 USCS § § 3501 et seq.] shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order [3 USCS prec § 101 note and 5 USCS § 903 note], relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

(c) (1) Except as provided in paragraph (2), this subchapter [44 USCS § § 3501 et seq.] shall not apply to the collection of information--

(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

(B) during the conduct of--

(i) a civil action to which the United States or any official or agency thereof is a party; or

(ii) an administrative action or investigation involving an agency against specific individuals or entities;

(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980 [15 USCS § 57b-1]; or

(D) during the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981 [50 USCS § 401 note], or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(2) This subchapter [44 USCS § § 3501 et seq.] applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(d) Nothing in this subchapter [44 USCS § § 3501 et seq.] shall be interpreted as increasing or decreasing the authority conferred by sections 11331 and 11332 of title 40 on the Secretary of Commerce or the Director of the Office of Management and Budget.

(e) Nothing in this subchapter [44 USCS § § 3501 et seq.] shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

HISTORY:

(Added May 22, 1995, P.L. 104-13, § 2, 109 Stat. 183; Feb. 10, 1996, P.L. 104-106, Div E, Title LI, Subtitle D, § 5131(e)(2), 110 Stat. 688; Nov. 18, 1997, P.L. 105-85, Div A, Title X, Subtitle G, § 1073(h)(5)(C), 111 Stat. 1907; Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654; Aug. 21, 2002, P.L. 107-217, § 3(l)(7), 116 Stat. 1302.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Antitrust Civil Process Act", referred to in this section, is Act Sept. 19, 1962, P.L. 87-664, which appears generally as 15 USCS § § 1311 et seq. For full classification of such Act, consult USCS Tables volumes.

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 § 3518 (Act Dec. 11, 1980, P.L. 96-511, § 2(a), 94 Stat. 2824) 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 related to the effect of former *44 USCS § § 3501* et seq. on existing laws and regulations.

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:

1996. Act Feb. 10, 1996 (effective 180 days after enactment, as provided by § 5701 of such Act), in subsec. (d), substituted "section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987 (*40 U.S.C. 759* note) on the Secretary of Commerce or" for "Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or".

1997. Act Nov. 18, 1997 (applicable as provided by § 1073(i) of such Act, which appears as *10 USCS § 101* note), in subsec. (d), substituted "Clinger-Cohen Act of 1996 (*40 U.S.C. 1441*)" for "Information Technology Management Reform Act of 1996".

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 occurring.

2002. Act Aug. 21, 2002, in subsec. (d), substituted "sections 11331 and 11332 of title 40" for "section 5131 of the Clinger-Cohen Act of 1996 (*40 U.S.C. 1441*) and the Computer Security Act of 1987 (*40 U.S.C. 759* note)".

NOTES:

Research Guide:

Federal Procedure:

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

Interpretive Notes and Decisions:

1. Generally
2. Exemptions

1. Generally

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*.

2. Exemptions

Regulations regarding work place hazard communication standards promulgated by OSHA were insulated from authority and approval of Office of Management and Budget, due to limitations imposed on that authority under *44 USCS § § 3504* and *3518*, where regulations do not require collection of information and do not embody substantive policy decision-making entrusted to OSHA. *United Steelworkers of America, etc. v Pendergrass (1988, CA3) 855 F2d 108, 13 BNA OSHC 1825, 1988 CCH OSHD P 28284, 18 ELR 21294*, affd (1990) *494 US 26, 108 L Ed 2d 23, 110 S Ct 929, 14 BNA OSHC 1425, 1990 CCH OSHD P 28820, 20 ELR 20447* and cert den (1990) *494 US 1003, 108 L Ed 2d 472, 110 S Ct 1295, 14 BNA OSHC 1480*.

Collection information requests related to Minerals Management Service's audit of oil company under Federal Oil and Gas Royalty Management Act clearly fell within parameters of exemption for collection of information during investigation involving agency against specific individuals or entities. *Phillips Petroleum Co. v Lujan (1992, CA10 Okla) 963 F2d 1380, 119 OGR 346*, remanded (1993, CA10) *4 F3d 858, 127 OGR 135* (criticized in *OXY USA, Inc. v Babbitt (2000, CA10 Okla) 230 F3d 1178, 2000 Colo J C A R 5921, 31 ELR 20241, 147 OGR 102*).

Data collection programs undertaken with respect to civil rights laws are within scope of authority granted to Office of Management and Budget under *44 USCS § 3518*; thus, action taken by Department of Health and Human Services in eliminating mandatory self-evaluation requirement imposed on certain federal aid recipients under Age Discrimination

Act, 42 USCS § 6101, was appropriate because OMB properly eliminated requirement as unnecessarily burdensome for recipients. *Action Alliance of Senior Citizens v Bowen* (1988, App DC) 269 US App DC 463, 846 F2d 1449, vacated on other grounds, remanded (1990) 494 US 1001, 108 L Ed 2d 469, 110 S Ct 1329.

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.

Summonses issued on IRS Form 2039 seeking information concerning potential tax liability of individual does not require Office of Management and Budget control number under Paperwork Reduction Act where summonses were directed to "specific individual" under 44 USCS § 3518(c)(1). *United States v Particle Data, Inc.* (1986, ND Ill) 634 F Supp 272, 86-2 USTC P 9747, 58 AFTR 2d 5418.