Rules and Regulations

Federal Register
Vol. 81, No. 247
Friday, December 23, 2016

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2604

RIN 3209–AA39

Freedom of Information Act Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim final rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is updating its Freedom of Information Act (FOIA) regulation to implement changes in accordance with the FOIA Improvement Act of 2016.

DATES: This interim final rule is effective December 23, 2016. Written comments are invited and must be received on or before January 23, 2017.

ADDRESSES: You may submit written comments to OGE on the interim final rule by any of the following methods:

- *Email: usoge@oge.gov.* Include the appropriate Regulation Identifier Number in the subject line of the message.
- *Fax:* (202) 482–9237.
- *Mail/Hand Delivery/Courier:* U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: Jennifer Matis, Assistant Counsel.

Instructions: All submissions must include OGE's agency name and the appropriate Regulation Identifier Number (RIN) 3209–AA39 for this proposed rulemaking. OGE will post all comments on its Web site (*www.oge.gov*). All comments received will be posted without change; OGE generally does not edit a commenter's personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jennifer Matis, Assistant Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917; Telephone: 202–482–9216; TTY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Substantive Discussion

On June 30, 2016, the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (the Act) was enacted. The Act specifically requires all agencies to review and update their Freedom of Information Act (FOIA) regulations in accordance with its provisions. OGE is making changes to its regulations accordingly, including correcting citations, highlighting the electronic availability of records, implementing the ''rule of three'' for frequently requested records, notifying requesters of their right to seek assistance from the FOIA Public Liaison and the Office of Government Information Services, changing the time limit for appeals, implementing the foreseeable harm standard, describing limitations on assessing search fees if the response time is delayed, and adding new annual reporting requirements.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with mandates required by the FOIA Improvement Act of 2016, which requires that agencies amend their FOIA regulations not later than 180 days after the date of enactment. It is also in the public interest in order to provide notice to requestors of the additional time to file appeals.

Regulatory Flexibility Act

As the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects individuals requesting records under the FOIA.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. In promulgating this rulemaking, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. The rule has not been reviewed by the Office of Management and Budget because it is not a significant regulatory action for the purposes of Executive Order 12866.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2604

Administrative practice and procedure, Archives and records, Confidential business information, Freedom of information, Reporting and recordkeeping requirements.

Approved: December 20, 2016.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

For the reasons set out above, OGE amends 5 CFR part 2604 as follows:

PART 2604—FREEDOM OF INFORMATION ACT RULES AND SCHEDULE OF FEES FOR THE PRODUCTION OF PUBLIC FINANCIAL DISCLOSURE REPORTS

■ 1. The authority citation for part 2604 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 101–505; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

■ 2. Amend § 2604.103 by revising the definition of ''Chief FOIA Officer'' to read as follows:

§ 2604.103 Definitions.

* * * * *

Chief FOIA Officer means the OGE official designated in 5 U.S.C. 552(j)(1) to provide oversight of all of OGE's FOIA program operations.

* * * * *

■ 3. Amend § 2604.201 by revising paragraphs (b) introductory text and (b)(4), removing paragraph (c), and redesignating paragraph (d) as paragraph (c) to read as follows:

§ 2604.201 Public reading room facility and Web site.

* * * * *

(b) *Records available.* The OGE Web site contains OGE records which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection in an electronic format, including:

* * * * *

(4) Copies of records created by OGE that have been released to any person under subpart C of this part and that, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records or that have been requested three or more times; and

* * * * *

■ 4. Amend § 2604.202 by revising paragraph (a) to read as follows:

§ 2604.202 Index identifying information for the public.

(a) OGE will maintain and make available for public inspection in an electronic format a current index of the materials available on its Web site that are required to be indexed under 5 U.S.C. 552(a)(2).

* * * * *

■ 5. Amend § 2604.303 by revising paragraphs (a) and (b)(4), and adding paragraph (b)(5) to read as follows:

§ 2604.303 Form and content of responses.

(a) *Form of notice granting a request.* After the FOIA Officer has made a determination to grant a request in whole or in part, the requester will be notified in writing. The notice will describe the manner in which the record will be disclosed, whether by providing a copy of the record with the response or at a later date, or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection may not unreasonably disrupt OGE operations. The response letter will inform the requester of the right of the requester to seek assistance from the FOIA Public Liaison. The response letter will also inform the requester in the response of any fees to be charged in accordance with the provisions of subpart E of this part.

(b) * * *

(4) A statement that the denial may be appealed under § 2604.304, and a description of the requirements of that section; and

(5) A statement of the right of the requester to seek dispute resolution services from the FOIA Public Liaison or the Office of Government Information Services (OGIS).

■ 6. Amend § 2604.304 by revising paragraph (b) to read as follows:

§ 2604.304 Appeal of denials.

* * * * *

(b) *Letter of appeal.* The appeal must be in writing and must be sent within 90 calendar days of receipt of the denial letter. An appeal should include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons or arguments advanced in support of disclosure of the record.

* * * * *

■ 7. Amend § 2604.305 by revising paragraph (c) to read as follows:

§ 2604.305 Time limits.

* * * * *

(c) *Extension of time limits.* When additional time is required for one of the reasons stated in paragraph (d) of this section, OGE will, within the statutory 20-working day period, issue written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. If more than 10 additional working days are needed, the requester will be notified and provided an opportunity to limit the scope of the request or to arrange for an alternative time frame for processing the request or a modified request. To aid the requester, OGE will make available its FOIA Public Liaison to assist in the resolution of any disputes. Additionally, OGE will notify the requester of the right of the requester to seek dispute resolution services from OGIS.

* * * * *

■ 8. Amend § 2604.401 by revising paragraph (a) to read as follows:

§ 2604.401 Application of exemptions.

(a) *Foreseeable harm standard.* A requested record will not be withheld from inspection or copying unless it comes within one of the classes of records exempted by 5 U.S.C. 552 and OGE reasonably foresees that disclosure would harm an interest protected by an exemption described in 5 U.S.C. 552(b) or is prohibited by law. Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure under 5 U.S.C. 552(b)(3).

* * * * *

■ 9. Amend § 2604.503 by revising paragraph (d) to read as follows:

§ 2604.503 Limitations on charging fees.

* * * * *

(d) If OGE does not comply with one of the time limits under § 2604.305, it will not assess search fees (or in the case of a requester described under § 2604.502(c), duplication fees), except as provided in paragraphs (d)(1) through (d)(3) of this section.

(1) If OGE has determined that unusual circumstances apply, as defined in 5 U.S.C. 552(a)(6)(B), and OGE provided timely written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B), a failure to comply with the time limit is excused for an additional 10 days.

(2) If OGE has determined that unusual circumstances apply, as defined in 5 U.S.C. 552(a)(6)(B), and more than 5,000 pages are necessary to respond to the request, OGE may charge search fees (or in the case of requesters described under § 2604.502(c), duplication fees) if OGE has provided timely written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B) and OGE has discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5. U.S.C. 552(a)(6)(B)(ii).

(3) If a court has determined that exceptional circumstances exist, as

defined in 5 U.S.C. 552(a)(6)(B), a failure to comply with the time limits shall be excused for the length of time provided by the court order.

■ 10. Revise § 2604.601 to read as follows:

§ 2604.601 Electronic posting and submission of annual OGE FOIA report.

On or before February 1 of each year, OGE will submit to the Office of Information Policy at the United States Department of Justice and to the Director of OGIS an Annual FOIA Report. The report will include the information required by 5 U.S.C. 552(e). OGE will electronically post on its Web site the report and the raw statistical data used in each report, in accordance with 5 U.S.C. 552(e)(3).

[FR Doc. 2016–31004 Filed 12–22–16; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2014–0092]

RIN 0579–AE17

Importation of Lemons From Northwest Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of lemons from northwest Argentina into the continental United States. As a condition of entry, lemons from northwest Argentina would have to be produced in accordance with a systems approach that includes requirements for importation in commercial consignments; registration and monitoring of places of production and packinghouses; pest-free places of production; grove sanitation, monitoring, and pest control practices; treatment with a surface disinfectant; lot identification; and inspection for quarantine pests by the Argentine national plant protection organization. Additionally, lemons from northwest Argentina will have to be harvested green and within a certain time period, or treated for Mediterranean fruit fly in accordance with an approved treatment schedule. Lemons from northwest Argentina will also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the lemons have been inspected and found to be free of quarantine pests and were produced in accordance with the requirements. This action allows for the importation of lemons from northwest Argentina into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: Effective January 23, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Juan A. (Tony) Román, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2242.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–75, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

On May 10, 2016, we published in the **Federal Register** (81 FR 28758, Docket No. APHIS–2014–0092) a proposal [1] to amend the regulations to allow the importation of commercial consignments of fresh lemons from northwest Argentina into the continental United States, subject to a systems approach.

We solicited comments concerning our proposal for 60 days ending July 11, 2016. We extended the deadline for comments until August 10, 2016, in a document published in the **Federal Register** on July 11, 2016 (81 FR 44801, Docket No. APHIS–2014–0092). We received 414 comments by that date. They were from domestic and foreign citrus producers, State and national organizations representing citrus producers, State departments of agriculture, an organization of State plant pest regulatory agencies, Argentina's national plant protection organization, the Argentine embassy, lemon importers and wholesalers, longshoremen, U.S. ports of entry, Senators, Representatives, an Argentine organization devoted to citrus research, and private citizens. Forty-seven commenters supported the rule as proposed. Seventy-six commenters generally opposed the proposed rule but did not address any specific provisions. The remaining commenters raised a number of issues and concerns about the proposed rule. These comments are discussed below by topic.

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0092.*

One commenter stated that the proposed rule failed to comply with the requirements of the National Environmental Policy Act (NEPA). Specifically, the commenter stated that the proposed rule is a major Federal action that significantly affects the human environment, as set forth in 40 CFR 1508.18 and 1508.27, respectively, and that the Animal and Plant Health Inspection Service (APHIS) should have prepared an environmental impact statement or environmental assessment (EA). The commenter further stated that none of the APHIS categorical exclusions set forth in 7 CFR 1b.3 apply, therefore at a minimum, APHIS is obligated to prepare an EA.

APHIS notes that the APHIS NEPA implementing regulations in 7 CFR part 372 specify that additional routine measures used by APHIS are categorically exempt from NEPA, in addition to those measures set forth in 7 CFR 1b.3. The measures in this rule that will occur within the United States fall within the scope of these additional routine measures. Accordingly, a categorical exclusion was prepared.

We do not agree that the rule meets Council on Environmental Quality requirements for a ''significant'' Federal action, and thus, by definition, cannot be a ''major'' Federal action (a type of significant action). The rule is not contextually significant from a policy standpoint because it does not substantially alter existing policy regarding market access requests, and has severity/intensity only if one concedes that the mitigations specified in the rule are ineffective in precluding the introduction of quarantine pests. We consider them effective, for reasons discussed below.

One commenter stated that APHIS must take all available measures to preclude introduction of invasive species into the United States.

APHIS agrees. Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), we are responsible for regulating exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that are based on sound science and that will reduce the risk of dissemination of plant pests or noxious weeds. For this reason we prepared a pest risk assessment (PRA) and assigned mitigations with a proven track record in the risk management document (RMD).

One commenter noted that APHIS has also recently published proposed rules to allow for the importation of citrus from South Africa (79 FR 51273, Docket No. APHIS–2014–0015) and Chile (81