

# Rules and Regulations

Federal Register

Vol. 63, No. 80

Monday, April 27, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF MANAGEMENT AND BUDGET

### 5 CFR Part 1303

RIN 0348-AB42

#### Freedom of Information Act

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Final rule.

**SUMMARY:** The Office of Management and Budget (OMB) is issuing a final rule revising its regulations implementing 5 U.S.C. 552, the Freedom of Information Act (FOIA). This final rule simplifies and streamlines OMB's FOIA regulations, and also implements the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231).

**DATES:** The final rule will be effective May 27, 1998.

**FOR FURTHER INFORMATION CONTACT:** Darrell A. Johnson, FOIA Officer, Office of Management and Budget, at (202) 395-5715.

**SUPPLEMENTARY INFORMATION:** On October 9, 1997, (62 FR 52668), OMB requested public comment on proposed revisions to its regulations at 5 CFR 1303 implementing the Freedom of Information Act. This revision is necessary to: implement the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231 (E-FOIA); update OMB's regulations to reflect current practice; and streamline OMB's regulations to eliminate redundant or otherwise unnecessary materials.

OMB received one set of comments regarding the proposed revisions to OMB's FOIA regulations. The commenter raised several issues regarding the proposal, generally seeking clarification of provisions implementing E-FOIA. We will address each of these issues.

The commenter raised three issues regarding § 1303.10(d), which provides for expedited processing of FOIA requests. The commenter requested additional clarification (such as through examples) in § 1303.10(d)(1) for how OMB interprets the second, third, and fourth criteria for responding to a FOIA request on an expedited basis. OMB believes that, while further clarification on these criteria may be appropriate in the future, it is preferable at this point to review requests for expedited treatment under the proposed regulatory criteria; experience in reviewing such requests should indicate what type of clarification is needed. The commenter also asked whether OMB intends to provide expedited treatment only in response to an expedition request by the FOIA requester, or whether OMB would expedite a request on its own initiative or in response to an expedition request by a third party. While OMB expects that it would typically expedite its response to a FOIA request in response to an expedition request by the FOIA requester, there may be cases in which OMB would decide to expedite its response even if the FOIA requester has not asked for expedited treatment. In this regard, we should note that, as explained in the proposed rule (62 FR 52668), OMB does not have a centralized FOIA process in which requests are handled on a consecutive basis; thus, the processing of one request generally does not delay OMB's ability to respond to other requests. Finally, the commenter asked what constitutes "certification" under § 1303.10(d), which implements 5 U.S.C. 552(a)(6)(E)(vi). Under the provision, a requester may self-certify that the information provided, to demonstrate a compelling need for an expedited response, is—in the words of the E-FOIA requirement—"true and correct to the best of [the requester's] knowledge and belief."

The commenter asked OMB to reconsider the 30-day limit in § 1303.10(e) for a FOIA requester to file an administrative appeal, and instead suggested a six-month time limit. Having considered the matter again, OMB continues to believe that 30 days is a reasonable period in which a requester can decide whether to file an administrative appeal of OMB's response to a FOIA request. It has been our experience that the vast majority of

appeals are filed within a few weeks of OMB's response. In addition to providing the requester with sufficient time, a 30-day limit will also discourage the filing of "stale" appeals that could require OMB to duplicate much of the work done in response to the original request.

Regarding § 1303.10(g), the commenter suggested that OMB delete (or provide additional explanation regarding) the second sentence, which concerns the statutory consequences of a requester refusing to reasonably modify a request or arrange an alternative time frame for an agency response. OMB has retained the sentence, which is intended simply to alert requesters to the statutory consequences of refusing to reasonably modify a request or arrange an alternative response period (which is the subject of the first sentence in that paragraph).

Regarding § 1303.20, the commenter suggested that the regulations elaborate further on the procedures for gaining access to OMB's offices, in order to inspect or copy records. We believe that additional detail is not needed regarding the access procedures. As explained in the proposed rule (62 FR 52668), one of OMB's aims in revising its FOIA regulations has been to streamline them. Persons seeking to inspect or copy requested materials may write or phone the FOIA Officer, at the listed address and phone number.

Finally, the commenter asked for clarification regarding the statement in § 1303.60(c) that OMB would consider "the time period over which the requests have occurred" in determining whether it is reasonable to believe that multiple requests in fact constitute a single request. While further clarification might be appropriate in the future, we believe it is preferable at this point to review FOIA requests under the general standard and to see whether any specific clarification would be necessary or desirable.

One additional change has been made in the final rule. References to the "Deputy Assistant Director for Administration" have been changed to the "FOIA Officer."

Accordingly, OMB is revising its FOIA regulations by adopting the revisions as proposed.

### **Regulatory Flexibility Act, Unfunded Mandates Reform Act, and Executive Orders 12866 and 12875**

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the final rule will not have a significant economic effect on a substantial number of small entities; the rule addresses the procedures to be followed when responding to requests for information under the Freedom of Information Act. For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as well as Executive Orders No. 12866 and 12875, the rule would not significantly or uniquely affect small governments, and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more. Finally, the final rule is not a "major rule" under 5 U.S.C. chapter 8; the rule will not have any of the effects set forth in 5 U.S.C. 804(2).

### **List of Subjects in 5 CFR Part 1303**

Freedom of Information Act.

**Franklin D. Raines,**  
*Director.*

For the reasons set forth in the preamble, OMB amends 5 CFR Part 1303 as follows:

### **PART 1303—[AMENDED]**

1. The authority citation for part 1303 is revised to read as follows:

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

2. Section 1303.2 is revised to read as follows:

#### **§ 1303.2 Authority and functions.**

The general functions of the Office of Management and Budget, as provided by statute and executive order, are to develop and execute the budget, oversee implementation of Administration policies and programs, advise and assist the President, and develop and implement management policies for the government.

3. Section 1303.3 is revised to read as follows:

#### **§ 1303.3 Organization.**

(a) The brief description of the central organization of the Office of Management and Budget follows:

(1) The Director's Office includes the Director, the Deputy Director, the Deputy Director for Management, and the Executive Associate Director.

(2) Staff Offices include General Counsel, Legislative Affairs, Communications, Administration, and Economic Policy.

(3) Offices that provide OMB-wide support include the Legislative Reference and Budget Review Divisions.

(4) Resource Management Offices. These offices develop and support the

President's management and budget agenda in the areas of Natural Resources, Energy and Science, National Security and International Affairs, Health and Personnel, Human Resources, and General Government and Finance.

(5) Statutory offices include the Office of Federal Financial Management, Office of Federal Procurement Policy, and the Office of Information and Regulatory Affairs.

(b) The Office of Management and Budget is located in Washington, DC, and has no field offices. Staff are housed in either the Old Executive Office Building, 17th Street and Pennsylvania Ave, NW., or the New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Persons desiring to visit offices or employees of the Office of Management and Budget, in either building, must write or telephone ahead to make an appointment. Security in both buildings prevents visitors from entering the building without an appointment.

5. Section 1303.10 is revised to read as follows:

#### **§ 1303.10 Access to information.**

(a) The Office of Management and Budget makes available information pertaining to matters issued, adopted, or promulgated by OMB, that are within the scope of 5 U.S.C. 552(a)(2). A public reading area is located in the Executive Office of the President Library, Room G-102, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, phone (202) 395-5715. Some of these materials are also available from the Executive Office of the President's Publications Office, Room 2200 New Executive Office Building, 725 17th Street NW., Washington, DC 20503, phone (202) 395-7332. OMB issuances are also available via fax-on-demand at (202) 395-9068, and are available electronically from the OMB homepage at <http://www.whitehouse.gov/WH/EOP/omb>. In addition, OMB maintains the Office of Information and Regulatory Affairs (OIRA) Docket Library, Room 10102, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, phone (202) 395-6880. The Docket Library contains records related to information collections sponsored by the Federal government and reviewed by OIRA under the Paperwork Reduction Act of 1995. The Docket Library also maintains records related to proposed Federal agency regulatory actions reviewed by OIRA under Executive Order 12866 "Regulatory Planning and Review". Telephone logs and materials from meetings with the public attended by the OIRA

Administrator are also available in the Docket Library.

(b) The FOIA Officer is responsible for acting on all initial requests. Individuals wishing to file a request under the Freedom of Information Act (FOIA) should address their request in writing to the FOIA Officer, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Phone (202) 395-5715. Requests for information shall be as specific as possible.

(c) Upon receipt of any request for information or records, the FOIA Officer will determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such request whether it is appropriate to grant the request and will immediately provide written notification to the person making the request. If the request is denied, the written notification to the person making the request shall include the names of the individuals who participated in the determination, the reasons for the denial, and a notice that an appeal may be lodged within the Office of Management and Budget. (Receipt of a request as used herein means the date the request is received in the office of the FOIA Officer.)

(d) Expedited processing. (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which effect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information

dissemination, though it need not be his or her sole occupation. A requester within the category (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten days of its receipt of a request for expedited processing, OMB will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(e) Appeals shall be set forth in writing within 30 days of receipt of a denial and addressed to the FOIA Officer at the address specified in paragraph (b) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or his designee, within 20 days (excepting Saturdays, Sundays, and legal public holidays). If, on appeal, the denial is in whole or in part upheld, the written determination will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(f) In unusual circumstances, the time limits prescribed in paragraphs (c) and (e) of this section may be extended for not more than 10 days (excepting Saturdays, Sundays, or legal public holidays). Extensions may be granted by the FOIA Officer. The extension period may be split between the initial request and the appeal but in no instance may the total period exceed 10 working days. Extensions will be by written notice to the persons making the request and will set forth the reasons for the extension and the date the determination is expected.

(g) With respect to a request for which a written notice under paragraph (f) of this section extends the time limits prescribed under paragraph (c) of this section, the agency shall notify the person making the request if the request cannot be processed within the time limit specified in paragraph (f) of this section and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request

or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of 5 U.S.C. 552 (a)(6)(C). When OMB reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, OMB may aggregate those requests for purposes of this paragraph. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(h) As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term "unusual circumstances" means:

(1) The need to search for and collect the requested records from establishments that are separated from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

6. Section 1303.20 is revised to read as follows:

#### **§ 1303.20 Inspection and copying.**

When a request for information has been approved pursuant to § 1303.10, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the FOIA Officer at the address or telephone number listed in § 1303.10(b). Such materials may be copied and reasonable facilities will be made available for that purpose. Copies of individual pages of such materials will be made available at the price per page specified in § 1303.40(d); however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner when copies also are offered for sale by the Superintendent of Documents.

7. Section 1303.30 (d) and (e) are revised to read as follows:

#### **§ 1303.30 Definitions.**

(d) The term *search* means the process of looking for and retrieving records or information responsive to a request. It

includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. OMB employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. Search should be distinguished, moreover, from review of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section).

(e) The term *duplication* means the making of a copy of a document, or of the information contained in it, necessary to respond to a FOIA request. Such copies can take the form of paper, microform, audio-visual materials, or electronic records (e.g., magnetic tape or disk), among others. The requester's specified preference of form or format of disclosure will be honored if the record is readily reproducible in that format.

8. In § 1303.40, paragraph (f) is revised to read as follows:

#### **§ 1303.40 Fees to be charged—general.**

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the FOIA Officer, Office of Management and Budget, Washington, DC 20503.

9. In § 1303.60, paragraph (c) is revised and the concluding text of paragraph (d) is designated as paragraph (d)(3) and revised to read as follows:

#### **§ 1303.60 Miscellaneous fee provisions.**

(c) Aggregating requests. A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When OMB reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, OMB may aggregate those requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is

the time period over which the requests have occurred.

(d) Advance payments. \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) When OMB acts under paragraph (d)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits), will begin only after OMB has received fee payments described in paragraphs (d)(1) and (2) of this section.

\* \* \* \* \*

[FR Doc. 98-10967 Filed 4-24-98; 8:45 am]

BILLING CODE 3110-01-P

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 6

#### Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 1998 Tariff-Rate Quota Year.

**SUMMARY:** This document announces the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

**EFFECTIVE DATE:** April 27, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Richard P. Warsack, Licensing Authority, Import Policies and Programs Division, STOP 1029, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250-1029 or telephone at (202) 720-9439.

**SUPPLEMENTARY INFORMATION:** The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20-6.36 which provides for the issuance of licenses to import certain dairy articles which are subject to tariff-rate quotas at the low-tier tariff (TRQs) set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses for the quota year are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles at the low-tier tariff is monitored by the Dairy Import Program Group, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, and the U.S. Customs Service.

The regulation at 7 CFR 6.34(a) states that whenever a historical license

(Appendix 1) is not issued to an applicant pursuant to the provisions of 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2. Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets out revised Appendices for the 1998 tariff-rate quota year.

Issued at Washington, D.C. the 22nd day of April, 1998.

**Richard P. Warsack,**

*Licensing Authority.*

#### List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 6 is amended as follows:

1. The authority citation for Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

**Authority:** Additional U.S. Notes 6, 7, 8, 12, 14, 16-23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97-258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103-465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

BILLING CODE 3410-10-M