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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1630

Privacy Act Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing in Part 1630, final Privacy Act regulations. These regulations describe notification, access and amendment of records procedures for records in systems of records operated by the Board. These procedures include within their purview all records of the Thrift Savings Plan.

EFFECTIVE DATE: May 7, 1990.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523-6367. Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The Executive Director of the Federal Retirement Thrift Investment Board (the "Board") is publishing in part 1630 final regulations governing procedures for processing requests for notification, access, and amendment of records under the Privacy Act (5 U.S.C. 552a). Initial, interim Privacy Act regulations were published for comment at 52 FR 8053 (March 16, 1987).

The Board was established by Pub. L. 99-335 (June 8, 1986), the Federal Employees' Retirement System Act of 1986 (FERSA) (codified principally at 5 U.S.C. 8401-8479), as amended. Pursuant to FERSA the Board operates the Thrift Savings Plan (TSP), a tax deferred retirement plan for Federal employees. The Board is an independent establishment of the Federal Government located in Washington, DC. It operates systems of records under the

Privacy Act similar to those operated by other Federal agencies, e.g., payroll and personnel records of Federal employees, EEO and grievance files, Board Members' biographical files and financial disclosure reports. In addition, the Board maintains a Government-wide system of records on all current and certain former Federal employees, Members of Congress, Justices, judges, magistrates and other covered personnel who are or were participants of the TSP. The Board's recordkeeper for Thrift Savings Plan records may be a private contractor or a Federal agency. In either case, the recordkeeper maintains Thrift Savings Plan records in order to accomplish a Board function and is subject to the Privacy Act. At present, the Board's recordkeeper is the National Finance Center, Department of Agriculture, New Orleans, LA 70161-1500.

Only one comment was received pursuant to the Board's request for comments. The comment, received from a Federal agency, suggested an additional routine use. The Board accepted the suggestion and discusses it in the preamble to the system notice for FRTIB-1, Thrift Savings Plan records, which will be found elsewhere in this issue of the Federal Register.

A number of revisions were made to the interim Privacy Act regulations based upon the Board's experience in carrying out its primary function of operating the Thrift Savings Plan. The following Redesignation Table is provided in an effort to aid the reader in following the revisions.

REDESIGNATION TABLE

Interim regulation section	Final regulation section	Action
1630.1	1630.1	No change.
1630.2	1630.2	Revised.
1630.3	1630.3(a)	New.
1630.4 and 1630.5	1630.3(b)	Same.
1630.6	1630.4	Merged and expanded.
1630.7	1630.5	Same, renumbered.
1630.8	1630.6	Renumbered and expanded.
1630.9	1630.7	Renumbered and expanded.
1630.10	1630.8	Renumbered and expanded.
	1630.9	Renumbered.

REDESIGNATION TABLE—Continued

Interim regulation section	Final regulation section	Action
1630.11	1630.10	Renumbered.
1630.11(a)(3)		Deleted.
1630.12	1630.11	Renumbered and expanded.
1630.13	1630.12	Renumbered.
1630.14	1630.13	Renumbered.
1630.15	1630.14	Renumbered.
1630.16	1630.15	Renumbered.
1630.17	1630.16	Renumbered and revised.
	1630.17	New.
1630.18	1630.18	Same.

The Board's section-by-section description of the revisions to the interim regulations follows. Initial references are to the final regulations:

1. *Section 1630.2.* Definitions of "Thrift Savings Plan" and "TSP records" have been added.

2. *Section 1630.3.* A subsection (a) was added setting forth the requirement that a new or revised system will be published in the Federal Register for comment. Interim § 1630.3 was redesignated as subsection (b).

3. *Section 1630.4.* Interim §§ 1630.4 and .5 were combined and included in § 1630.4 in order to simplify the regulatory procedure. Section 1630.4 was rewritten to describe separately and in detail the notification and access provisions for TSP records. Access provisions for TSP records are written in chart form for the sake of clarity. A dichotomy exists in some cases between current Federal employees and former employees who are still participants in the TSP with respect to the Privacy Act contact point. This is due to the fact that for former employees there are no contributions flowing from the employing agency to the Board's recordkeeper, nor may they receive TSP loans. An explanation of the authority of the employing Federal agency over current Federal employees is set forth in new § 1630.11(a)(5). The revised regulation also authorizes telephone inquiries to the TSP Service Office. Requests for an accounting of disclosures of TSP records made to third parties under 5 U.S.C. 552a(c) are denoted as requests for "disclosure history." The nomenclature was changed in order to avoid confusion with the language used by accounting

firms and others who audit TSP records on a regular basis. Furthermore, a subsection (a)(2) was added to provide a three-day time limit for the Board to transfer an incorrectly addressed request to the Board's recordkeeper. Section (a)(3) was inserted to advise subjects of TSP records that there will not be a disclosure history (accounting) made of a disclosure to an auditing or accounting firm contracted by the Board in accordance with FERSA. Such contractors are Board employees under 5 U.S.C. 552a(m) and disclosures to such entities need not be documented under 5 U.S.C. 552a(c). The procedures for Privacy Act requests for non-TSP records were not affected by these revisions and are not included in the chart.

4. *Section 1630.6.* Interim § 1630.7 was renumbered and revised to set forth separate procedures for TSP and non-TSP records.

5. *Section 1630.7.* Revised and renumbered. A subsection (d) was added to Interim § 1630.8 to provide for identification procedures when making a telephonic inquiry to the TSP Service Office. A participant must give his name, Social Security number and Personal Identification Number (PIN). If the PIN is lost or unavailable, a participant must provide other identifying information.

6. *Section 1630.10.* Interim § 1630.11 was renumbered. Interim § 1630.11(a)(3) was deleted. The Board's policy of not providing participants with additional copies of the semiannual statement has been reversed. The Board will provide a participant with a copy of a prior semiannual statement.

7. *Section 1630.11.* Interim § 1630.12 was renumbered and expanded. New § 1630.11 provides separately and in detail the procedure for amendment of records in the TSP system of records. The procedure was drafted in chart form for the sake of clarity. Participants must make a request to the Board's recordkeeper or the former employing agency depending upon the type of record to be amended and the participant's status as a current or separated Federal employee. The Board has control over earnings, loan prepayments and interfund transfers. These actions occur between the Board and the participant directly. Agency and participant contributions, adjustments to these, and payment of loan installments by payroll allotment are transactions generated between the participant and the employing agency and forwarded to the Board for posting. Errors in these latter transactions are generally corrected by the employing agency. The same is true of personal information

held by the employing agency and transmitted to the Board (e.g., Social Security number or retirement code). Subsection (a)(3) was added to set forth Board policy that requests to amend TSP records which are money claims will be determined under the Board's Error Correction regulations, found at 5 CFR part 1605, and not under §§ 1630.12-1630.14 of these regulations. The Board intends that there will be one avenue of administrative exhaustion for TSP money claims. The Board's Error Correction regulations comport with the requirements of the Privacy Act. Subsection (a)(4) was added to make clear that the Board, its recordkeeper and the employing or former employing agency could correct errors *sua sponte* without a request for correction. Procedures for non-TSP records did not change and are not included in the chart.

8. *Section 1630.11a(5)* was added to explain that while the Board operates a TSP system of records, it does not have sole control of the information going into those records. Thus, while the Board is able to change certain TSP records, it is unable to change others which are in the control of employing Federal agencies. This situation is the result of the flow of financial and personal information from employing Federal agencies to the TSP.

9. *Section 1630.16.* Interim § 1630.17 was renumbered and revised to increase from three to ten the number of pages copied without charge. The cost of photocopying was increased to \$.15 as that is the fee for FOIA copying costs. Copies made for access purposes are now to be charged, except for the first ten pages. It is assumed that most Privacy Act requests will be for TSP records which are fewer than ten pages.

10. *Section 1630.17.* This is a new section, added to make clear that other Federal agencies may request information from the Board in order to reconcile TSP accounts and that the Board may, in appropriate cases, charge for such services. The Board has a fiduciary responsibility to act solely in the best interests of the participants and beneficiaries of the TSP and failure to charge in appropriate circumstances could be construed as violating that fiduciary responsibility.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only Federal employees or former Federal employees who make Privacy Act requests.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 5 CFR Part 1630

Administrative practice and procedure, Privacy, Records.

Federal Retirement Thrift Investment Board.

Dated: April 27, 1990.

Francis X. Cavanaugh,
Executive Director.

Part 1630 of title 5 is revised as follows:

PART 1630—PRIVACY ACT REGULATIONS

- Sec.
- 1630.1 Purpose and scope.
- 1630.2 Definitions.
- 1630.3 Publication of systems of records maintained.
- 1630.4 Request for notification and access.
- 1630.5 Granting access to a designated individual.
- 1630.6 Action on request.
- 1630.7 Identification requirements.
- 1630.8 Access of others to records about an individual.
- 1630.9 Access to the history accounting of disclosures from records.
- 1630.10 Denials of access.
- 1630.11 Requirements for requests to amend records.
- 1630.12 Action on request to amend a record.
- 1630.13 Procedures for review of determination to deny access to or amendment of records.
- 1630.14 Appeals process.
- 1630.15 Exemptions.
- 1630.16 Fees.
- 1630.17 Federal agency requests.
- 1630.18 Penalties.

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

§ 1630.1 Purpose and scope.

These regulations implement the Privacy Act of 1974, 5 USC 552a. The regulations apply to all records maintained by the Federal Retirement Thrift Investment Board that are contained in a system of records and that contain information about an individual. The regulations establish procedures that (a) authorize an individual's access to records maintained about him or her; (b) limit the access of other persons to those records; and (c) permit an individual to request the amendment or correction of records about him or her.

§ 1630.2 Definitions.

For the purposes of this part—

(a) *Agency* means agency as defined in 5 USC 552(e);

(b) *Board* means the Federal Retirement Thrift Investment Board;

(c) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(d) *Maintain* means to collect, use, or distribute;

(e) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Board, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(f) *Routine use* means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected;

(g) *System manager* means the official of the Board who is responsible for the maintenance, collection, use, distribution, or disposal of information contained in a system of records;

(h) *System of records* means a group of any records under the control of the Board from which information is retrieved by the name of the individual or other identifying particular assigned to the individual;

(i) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8;

(j) *Subject individual* means the individual by whose name or other identifying particular a record is maintained or retrieved;

(k) *TSP* means the Thrift Savings Plan which is administered by the Board pursuant to 5 U.S.C. 8351 and Chapter 84 (Subchapters III and VII);

(l) *TSP records* means those records maintained by the Thrift Savings Plan Service Office;

(m) *VRS* (Voice Response System) means the fully automated telephone information system for TSP account records;

(n) *Work days* as used in calculating the date when a response is due, includes those days when the Board is open for the conduct of Government business and does not include Saturdays, Sundays and Federal holidays.

§ 1630.3 Publication of systems of records maintained.

(a) Prior to the establishment or

revision of a system of records, the Board will publish in the Federal Register notice of any new or intended use of the information in a system or proposed system and provide interested persons with a period within which to comment on the new or revised system. Technical or typographical corrections are not considered to be revisions of a system.

(b) When a system of records is established or revised, the Board will publish in the Federal Register a notice about the system. The notice shall include:

- (1) The system name,
- (2) The system location,
- (3) The categories of individuals covered by the system,
- (4) The categories of records in the system,
- (5) The Board's authority to maintain the system,
- (6) The routine uses of the system,
- (7) The Board's policies and practices for maintenance of the system,
- (8) The system manager,
- (9) The procedures for notification, access to and correction of records in the system, and
- (10) The sources of information for the system.

§ 1630.4 Request for notification and access.

(a) *TSP records*. (1) A participant in the Thrift Savings Plan is a subject of System of Records FRTIB-1. A participant shall make his or her inquiry in accordance with the chart set forth below. The address of the Thrift Savings Plan Service Office is: National Finance Center, P.O. Box 61500, New Orleans, LA, 70161-1500. (Telephone No. 504-255-6000). Telephone inquiries are subject to the verification procedures set forth in § 1630.7. A written inquiry shall include the participant's name, Social Security number, and date of birth.

If you want:	If you are a former employee:	If you are a current employee:
To make inquiry as to whether you are a subject of this system of records.	Call or write TSP Service Office.	Call or write your employing agency in accordance with agency system of records on personnel or payroll records.
Access.....	Call or write TSP	● Call or write your employing agency

If you want:	If you are a former employee:	If you are a current employee:
Disclosure history of your TSP account (disclosures to entities other than your employing agency or the Board or auditors see § 1630.4 (a)(3)).	Service Office. Write TSP Service Office.	regarding personnel and payroll records (agency's and participant's contributions, earnings, loan repayments and adjustments to contributions). ● Call or write to the TSP Service Office regarding loan status and interfund transfers. Write TSP Service Office.

(2) A Privacy Act request which is incorrectly submitted to the Board will not be considered received until received by the TSP Service Office. The Board will submit such a Privacy Act request to the TSP Service Office within three workdays. A Privacy Act request which is incorrectly submitted to the TSP Service Office will not be considered received until received by the employing agency. The TSP Service Office will submit such a Privacy Act request to the employing agency within three workdays.

(3) No disclosure history will be made when the Board contracts for an audit of TSP financial statements (which includes the review and sampling of TSP account balances).

(4) No disclosure history will be made when the Department of Labor or the General Accounting Office audits TSP financial statements (which includes the review and sampling of TSP account balances) in accordance with their responsibilities under chapter 84 of title 5 of the U.S. Code. Rather, a requester will be advised that these agencies have statutory obligations to audit TSP activities and that in the course of such audits they randomly sample individual TSP accounts to test for account accuracy.

(b) *Non-TSP Board records*. An individual who wishes to know if a specific system of records maintained by the Board contains a record

pertaining to him or her, or who wishes access to such records, shall address a written request to the Privacy Act Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The request letter should contain the complete name and identifying number of the pertinent system as published in the annual **Federal Register** notice describing the Board's Systems of Records; the full name and address of the subject individual; the subject's Social Security number if a Board employee; a brief description of the nature, time, place, and circumstances of the individual's prior association with the Board; and any other information the individual believes would help the Privacy Act Officer determine whether the information about the individual is included in the system of records. In instances where the information is insufficient to ensure disclosure to the subject individual to whom the record pertains, the Board reserves the right to ask the requester for additional identifying information. The words "PRIVACY ACT REQUEST" should be printed on both the letter and the envelope.

§ 1630.5 Granting access to a designated individual.

(a) An individual who wishes to have a person of his or her choosing review a record or obtain a copy of a record from the Board shall submit an originally signed statement authorizing the disclosure of his or her record before the record will be disclosed. The authorization shall be maintained with the record.

(b) The Board will honor any Privacy Act request (e.g., a request to have access or to amend a record) which is accompanied by a valid power of attorney from the subject of the record.

§ 1630.6 Action on request.

(a) For TSP records, the Head, TSP Service Office, or designee, and for non-TSP records, the Privacy Act Officer will answer or acknowledge the inquiry within 10 work days of the date it is received by the Board. When the answer cannot be made within 10 work days, the Head, TSP Service Office or Privacy Act Officer will provide the requester with the date when a response may be expected and, whenever possible, the specific reasons for the delay.

(b) At a minimum, the acknowledgement to a request for access shall include:

(1) When and where the records will be available;

(2) Name, title and telephone number of the official who will make the records available;

(3) Whether access will be granted only by providing a copy of the record through the mail, or only by examination of the record in person if the Privacy Act Officer after consulting with the appropriate system manager has determined the requester's access would not be unduly impeded;

(4) Fee, if any, charged for copies (See § 1630.16); and

(5) If necessary, documentation required to verify the identity of the requester (See § 1630.7).

§ 1630.7 Identification requirements.

(a) *In person.* An individual should be prepared to identify himself or herself by signature, i.e., to note by signature the date of access, Social Security number, and to produce one photographic form of identification (driver's license, employee identification, annuitant card, passport, etc.). If an individual is unable to produce adequate identification, the individual must sign a statement asserting his or her identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to \$5,000 (see § 1630.18). In addition, depending upon the sensitivity of the records, the Privacy Act Officer after consulting with the appropriate system manager may require further reasonable assurances, such as statements of other individuals who can attest to the identity of the requester.

(b) *In writing.* An individual shall provide his or her name, date of birth, and Social Security number and shall sign the request. If a request for access is granted by mail and, in the opinion of the Privacy Act Officer after consulting with the appropriate system manager, the disclosure of the records through the mail may result in harm or embarrassment (if a person other than the subject individual were to receive the records), a notarized statement of identity or some other similar assurance of identity will be required.

(c) *By telephone.* (1) Telephone identification procedures apply only to requests from participants for information in system of records FRTIB-1, Thrift Savings Plan Records.

(2) A participant shall identify himself or herself by providing to the Head, TSP Service Office, or designee, the following: Name, Social Security number and Personal Identification Number (PIN). If the PIN has been lost or is unavailable, the participant must provide his or her date of birth and

current or former employing agency. If the Head, TSP Service Office, or designee, determines that any of the particulars provided by telephone are incorrect, the requester will be required to submit a request in writing.

(3) A participant calling the automated TSP Voice Response System must provide Social Security number and PIN.

§ 1630.8 Access of others to records about an individual.

(a) The Privacy Act provides for access to records in systems of records in those situations enumerated in 5 U.S.C. 552a(b) and are set forth in paragraph (b) of this section. Access by executors, administrators, personal representatives, beneficiaries and former spouses to TSP records may be authorized if there is compliance with a routine use under paragraph (b)(3) of this section.

(b) No official or employee of the Board, or any contractor of the Board or other Federal agency operating a Board system of records under an interagency agreement, shall disclose any record to any person or to another agency without the express written consent of the subject individual, unless the disclosure is:

(1) To officers or employees (including contract employees) of the Board who need the information to perform their official duties;

(2) pursuant to the requirements of the Freedom of Information Act, 5 U.S.C. 552;

(3) For a routine use that has been published in a notice in the **Federal Register** (routine uses for the Board's systems of records are published separately in the **Federal Register** and are available from the Board's Privacy Act Officer);

(4) To the Bureau of the Census for uses under Title 13 of the United States Code;

(5) To a person or agency which has given the Board advance written notice of the purpose of the request and certification that the record will be used only for statistical purposes. (In addition to deleting personal identifying information from records released for statistical purposes, the Privacy Act Officer shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records);

(6) To the National Archives of the United States if a record has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the

designee of the Archivist to determine whether the record has such value;

(7) In response to a written request that identifies the record and the purpose of the request made by another agency or instrumentality of any Government jurisdiction within or under the control of the United States for civil or criminal law enforcement activity, if that activity is authorized by law;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure a notification is transmitted to the last known address of the subject individual;

(9) To either House of Congress, or to a Congressional committee or subcommittee if the subject matter is within its jurisdiction;

(10) To the Comptroller General, or an authorized representative, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with section 3711(f) of Title 31.

§ 1630.9 Access to the history (accounting) of disclosures from records.

Rules governing access to the accounting of disclosures are the same as those for granting access to the records as set forth in § 1630.4.

§ 1630.10 Denials of access.

(a) The Privacy Act Officer or the Head, TSP Service Office, or designee, for records covered by system FRTIB-1, may deny an individual access to his or her record if:

(1) In the opinion of the Privacy Act Officer or the Head, TSP Service Office, or designee, the individual seeking access has not provided proper identification to permit access; or

(2) The Board has published rules in the *Federal Register* exempting the pertinent system of records from the access requirement.

(b) If access is denied, the requester shall be informed of the reasons for denial and the procedures for obtaining a review of the denial.

§ 1630.11 Requirements for requests to amend records.

(a) *TSP records.* (1) A participant in the TSP who wants to correct or amend a TSP record pertaining to him or her shall submit a written request in accordance with the following chart:

If you want to request amendment of a TSP record and

The type of record is:	You are a former employee, write to:	You are a current employee, write to:
Personnel or personal records (e.g., age, address or Social Security number).	TSP Service Office.	Your employing agency.
Agency's and participant's contributions, loan repayments and adjustments to contributions.	Your former employing agency.	Your employing agency.
Earnings, interfund transfers and loan prepayments.	TSP Service Office.	TSP Service Office.

(2) The address of the TSP Service Office is listed in § 1630.4(a).

(3) Requests for amendments which are claims for money because of administrative error will be processed in accordance with the procedures set forth for agencies and the Board (including the TSP Service Office which is the Board's recordkeeper) in the Board's Error Correction regulations found at 5 CFR part 1605. Sections 1630.12(b)-1630.14 of this part do not apply to such money claim amendments to TSP records as the Error Correction regulations are an equivalent substitute. Non-money claim TSP record appeals are covered by §§ 1630.12-1630.14, or if covered by the above chart the employing, or former employing, agency's Privacy Act procedures.

(4) Corrections to TSP account records which are made by the Board, its recordkeeper or the employing agency or the former employing agency on its own motion because of a detected administrative error will be effected without reference to Privacy Act procedures.

(5) A participant in the TSP who is currently employed by a Federal agency should be aware that the employing agency provides to the Board personal and payroll records on the participant, such as his or her date of birth, Social Security number, retirement code, address, loan repayments, the amount of participant's contribution, amount of the Government's contribution, if the participant is covered by the Federal Employees' Retirement System Act (FERSA, 5 U.S.C. Chapter 84), and adjustments to contributions. Requests submitted to the Board, or its recordkeeper, to correct information provided by the employing Federal agency will be referred to the employing agency. The reason for this referral is that the Board receives information periodically for the TSP accounts; if the

employing agency does not resolve the alleged error, the Board will continue to receive the uncorrected information periodically regardless of a one-time Board correction. The employing agency also has custody of the election and beneficiary forms (which are maintained in the Official Personnel Folder). Hence, requests for correction of records described herein shall be made to the employing agency.

(b) *Non-TSP records.* (1) Any other individual who wants to correct or amend a record pertaining to him or her shall submit a written request to the Board's Privacy Act Officer whose address is listed in § 1630.4. The words "Privacy Act—Request to Amend Record" should be written on the letter and the envelope.

(2) The request for amendment or correction of the record should, if possible, state the exact name of the system of records as published in the *Federal Register*; a precise description of the record proposed for amendment; a brief statement describing the information the requester believes to be inaccurate or incomplete, and why; and the amendment or correction desired. If the request to amend the record is the result of the individual's having gained access to the record in accordance with §§ 1630.4, 1630.5, 1630.6 or § 1630.7, copies of previous correspondence between the requester and the Board should be attached, if possible.

(3) If the individual's identity has not been previously verified, the Board may require documentation of identification as described in § 1630.7.

§ 1630.12 Action on request to amend a record.

(a) For TSP records, the Head, TSP Service Office, will acknowledge a request for amendment of a record, which is to be decided by that office in accordance with the chart in § 1630.11, within 10 work days. Requests received by the TSP Service Office which are to be decided by the current or former employing agency will be sent to that agency by the Head, TSP Service Office, within 3 work days of the date of receipt. A copy of the transmittal letter will be sent to the requester.

(b) For non-TSP records, the Privacy Act Officer will acknowledge a request for amendment of a record within 10 work days of the date the Board receives it. If a decision cannot be made within this time, the requester will be informed by mail of the reasons for the delay and the date when a reply can be expected, normally within 30 work days from receipt of the request.

(c) The final response will include the decision whether to grant or deny the request. If the request is denied, the response will include:

- (1) The reasons for the decision;
- (2) The name and address of the official to whom an appeal should be directed;
- (3) The name and address of the official designated to assist the individual in preparing the appeal;
- (4) A description of the appeal process with the Board; and
- (5) A description of any other procedures which may be required of the individual in order to process the appeal.

§ 1630.13 Procedures for review of determination to deny access to or amendment of records.

(a) Individuals who disagree with the refusal to grant them access to or to amend a record about them should submit a written request for review to the Executive Director, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The words "PRIVACY ACT—APPEAL" should be written on the letter and the envelope. Individuals who need assistance preparing their appeal should contact the Board's Privacy Act Officer.

(b) The appeal letter must be received by the Board within 30 calendar days from the date the requester received the notice of denial. At a minimum, the appeal letter should identify:

- (1) The records involved;
- (2) The date of the initial request for access to or amendment of the record;
- (3) The date of the Board's denial of that request; and
- (4) The reasons supporting the request for reversal of the Board's decision.

Copies of previous correspondence from the Board denying the request to access or amend the record should also be attached, if possible.

(c) The Board reserves the right to dispose of correspondence concerning the request to access or amend a record if no request for review of the Board's decision is received within 180 days of the decision date. Therefore, a request for review received after 180 days may, at the discretion of the Privacy Act Officer, be treated as an initial request to access or amend a record.

§ 1630.14 Appeals process.

(a) Within 20 work days of receiving the request for review, the Executive Director, after consultation with the General Counsel, will make a final determination on the appeal. If a final decision cannot be made in 20 work days, the Privacy Act Officer will inform the requester of the reasons for the

delay and the date on which a final decision can be expected. Such extensions are unusual, and should not exceed an additional 30 work days.

(b) If the original request was for access and the initial determination is reversed, the procedures in § 1630.7 will be followed. If the initial determination is upheld, the requester will be so informed and advised of the right to judicial review pursuant to 5 U.S.C. 552a(g).

(c) If the initial denial of a request to amend a record is reversed, the Board will correct the record as requested and inform the individual of the correction. If the original decision is upheld, the requester will be informed and notified in writing of the right to judicial review pursuant to 5 U.S.C. 552a(g) and the right to file a concise statement of disagreement with the Executive Director. The statement of disagreement should include an explanation of why the requester believes the record is inaccurate, irrelevant, untimely, or incomplete. The Executive Director shall maintain the statement of disagreement with the disputed record, and shall include a copy of the statement of disagreement to any person or agency to whom the record has been disclosed, if the disclosure was made pursuant to § 1630.9.

§ 1630.15 Exemptions.

(a) Pursuant to subsection (k) of the Privacy Act, 5 U.S.C. 552a, the Board may exempt certain portions of records within designated systems of records from the requirements of the Privacy Act, (including access to and review of such records pursuant to this part) if such portions are:

(1) Subject to the provisions of section 552(b)(1) of the Freedom of Information Act, 5 U.S.C. 552;

(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, 5 U.S.C. 552a: Provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would 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, or, prior to the effective date of the Privacy Act, 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence;

(3) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the United States Code;

(4) Required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosures 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, or, prior to the effective date of the Privacy Act, 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence;

(6) Test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence.

(b) Those designated systems of records which are exempt from the requirements of this part or any other requirements of the Privacy Act, 5 U.S.C. 552a, will be indicated in the notice of designated systems of records published by the Board.

(c) Nothing in this part will allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

§ 1630.16 Fees.

(a) Individuals will not be charged for:

- (1) The search and review of the record; and
- (2) Copies of ten (10) or fewer pages of a requested record.

(b) Records of more than 10 pages will be photocopied for 15 cents a page. If the record is larger than 8½ × 14 inches, the fee will be the cost of reproducing the record through Government or commercial sources.

(c) Fees must be paid in full before requested records are disclosed. Payment shall be by personal check or money order payable to the Federal

Retirement Thrift Investment Board, and mailed or delivered to the Head, TSP Service Office or to the Privacy Act Officer, depending upon the nature of the request, at the address listed in § 1630.4.

(d) The Head, TSP Service Office or the Privacy Act Officer may waive the fee if:

- (1) The cost of collecting the fee exceeds the amount collected; or
 - (2) The production of the copies at no charge is in the best interest of the Board.
- (e) A receipt will be furnished on request.

§ 1630.17 Federal agency requests.

Employing agencies needing automated data processing services from the Board in order to reconcile agency TSP records for TSP purposes may be charged rates based upon the factors of:

- (a) Fair market value;
- (b) Cost to the TSP; and
- (c) Interests of the participants and beneficiaries.

§ 1630.18 Penalties.

(a) Title 18, U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of \$10,000 or imprisonment for not more than five years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representation in any matter within the jurisdiction of any agency of the United States. Section (i)(3) of the Privacy Act, 5 U.S.C. 552a(i)(3), makes it a misdemeanor, subject to a maximum fine of \$5,000 to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Sections (i) (1) and (2) of 5 U.S.C. 552a provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; Lowfat Milk Requirement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: In response to section 101(b) of Public Law 101-147, the Child Nutrition and WIC Reauthorization Act

of 1989, enacted November 10, 1989, this rulemaking amends 7 CFR part 210, the National School Lunch Program regulations, to revise the lunch pattern to require schools to offer students fluid unflavored lowfat milk, as well as fluid whole milk, as a part of the school lunch service.

EFFECTIVE DATE: This rule is effective retroactive to November 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 515, Alexandria, Virginia or phone (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

Section 101(b) of Public Law 101-147, the Child Nutrition and WIC Reauthorization Act of 1989, requires schools participating in the National School Lunch Program to offer students fluid whole milk and fluid unflavored lowfat milk. This rule adopts this requirement without change. Because of the nondiscretionary, interpretive nature of this rule, the Administrator of the Food and Nutrition Service has determined that prior notice and comment are not required in accordance with 5 U.S.C. 553(b)(3)(A). Further, section 2 of Public Law 101-147 makes this provision effective on the date of enactment, November 10, 1989. Therefore, this rule is being made effective retroactive to November 10, 1989.

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of \$100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule imposes no new reporting or recordkeeping requirements requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and Final Rule Related Notice at 48 FR 29112, June 24, 1983.)

Background

Lowfat Milk Requirement

In 1986 Congress amended section 9(a)(2) of the National School Lunch Act (the Act) to require that whole milk be offered in the National School Lunch Program (NSLP) (42 U.S.C. 1758(a)(2)). As a result of this legislative action, the Department issued a regulation in March 1987 amending § 210.10(d)(1) to require schools to offer students: (1) Fluid whole milk; and (2) fluid unflavored lowfat milk, skim milk, or buttermilk (52 FR 29109, March 23, 1987). A subsequent clarification was issued by the Department on August 2, 1988, in which the current language of the rule was adopted (53 FR 29147).

Section 101(b) of Public Law 101-147, the Child Nutrition and WIC Reauthorization Act of 1989, enacted November 10, 1989, further amended section 9(a)(2) of the Act to read as follows: "Lunches served by schools participating in the school lunch program under this Act shall offer students fluid whole milk and fluid unflavored lowfat milk." (42 U.S.C. 1758(a)(2)). This final rule revises the lunch pattern under the NSLP to reflect this Congressional mandate. While, previously, schools had the option of offering students either unflavored skim milk, or buttermilk, in place of unflavored lowfat milk, schools now are required to offer students unflavored lowfat milk as a part of the Program lunch. The standard of identity for lowfat milk, as established by the Food and Drug Administration in 21 CFR 131.135, is milk containing either 1/2, 1, 1 1/2, or 2 percent milkfat.

In this latest modification of the NSLP milk requirement, Congress emphasized that it did not intend to prevent schools from offering other types of milk if they choose. Therefore, USDA continues to encourage schools to promote milk consumption by offering a wide variety of milks, such as skim milk, or buttermilk. However, because factors

such as enrollment and food service facilities vary greatly from school to school, USDA feels that the decision of whether to offer milks in addition to whole milk and lowfat milk should be made at the local level.

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grants programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 210 is amended as follows:

7 CFR PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: Secs. 2-12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751-1760, 1779.

2. In § 210.10, the introductory text of paragraph (d)(1) and paragraphs (d)(1)(i)-(d)(1)(iii) are removed and two new sentences are added to the beginning of the paragraph and designated as (d)(1) to read as follows:

§ 210.10 Lunch components and quantities.

(d) * * *

(1) *Milk.* Schools shall offer students fluid whole milk and fluid unflavored lowfat milk. This requirement does not preclude schools from offering additional kinds of milk. * * *

Dated: May 2, 1990.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

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BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 716]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 716 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 365,000 cartons during the period from May 6, 1990, through May 12, 1990. Such action is needed to balance the supply

of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 716 (7 CFR part 910) is effective for the period from May 6, 1990, through May 12, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that

this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on May 1, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for large-sized lemons (140's or larger) is good. However, significant levels of price discounting continue on small-sized lemons.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Note: This section will not appear in the Code of Federal Regulations.

2. Section 910.716 is added to read as follows:

§ 910.716 Lemon regulation 716.

The quantity of lemons grown in California and Arizona which may be handled during the period from May 6, 1990, through May 12, 1990, is established at 365,000 cartons.