Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

RIN 3206-AE97

Privacy Procedures for Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Under the authority of the Privacy Act of 1974, the Office of Personnel Management (OPM) is adopting a regulatory change regarding privacy procedures for personnel records. This regulatory change allows an agency or OPM to exempt from first party access certain very limited records. OPM proposed to exempt research performance ratings maintained within the OPM/GOVT-6, Personnel Research and Test Validation Records, system from the requirements of the Privacy Act at 5 U.S.C. 552a(d) for the data subject's right to have access to or request amendment of the record.

EFFECTIVE DATE: These regulations become effective June 17, 1992.

FOR FURTHER INFORMATION CONTACT: Jay Gandy, area code 202-606-1366.

SUPPLEMENTARY INFORMATION: OPM proposed this regulatory change in the Federal Register on February 26, 1991, at 56 FR 7819. The 60-day comment period ended April 29, 1991. OPM received two written comments. For the reasons discussed below, OPM has not changed substantively the original regulatory proposal.

OPM's Office of Personnel Research and Development (OPRD) gathers information for personnel research purposes as required by 5 U.S.C. 4702. OPM proposed the regulatory change to maintain the integrity of the research process allowing bona fide study of human resources management methods and initiatives. OPM's research process uses questionnaires appraising the characteristics, qualities, and performance of the Federal civilian workforce. The success of this research depends upon frank appraisals by supervisors, subordinates, or peers unencumbered by concerns regarding potential impact on any party. If a research performance rating were to be provided to the subject of the rating, the confidentiality of the rating would be lost and the value of the rating as reflecting a judgment free of various contextual influences would be destroyed. OPM is committed to using these ratings solely for research purposes and to insuring that the research ratings are never used for any personnel actions affecting the employee. Only a small number of designated OPM researchers have access to the ratings, and such access is never made in the context of identifying any specific individual.

One labor organization commented that the research appraisal is a better document than the administrative model in that management can outline the employee's performance without having to keep records to prove their views. The labor organization went on to say that the document should never be taken out of context and used against the employee in any way, including showing merit pay performance or overall work and time efficiency. OPM agrees completely that research appraisals will not be used for or against the employee in any way, but are strictly for research purposes. OPM categorically states that these research appraisals are never used for or against any employee, but are used solely for the research described above. If the rating were to be used in making any determination affecting the individual employee, OPM agrees that access would be provided to the individual. However, OPM envisions no circumstance in which a research rating would be used in such a way as to affect the subject of the rating.

OPM's proposed Privacy Act exemption for research performance appraisal records is based on 5 U.S.C. 552a(k)(4)'s "required by statute to be maintained and used solely as statistical records." Another labor organization commented that a "statistical record" by definition is maintained for statistical research or reporting purposes and not used to make any determination about an individual. OPM's proposal is not in opposition to what the union expresses. OPM categorically states that no determination about an individual, i.e., no decision that can affect the individual in any way, will be made based on this statistical appraisal. Any assessment of employee performance that will be retained in the employee's personnel records and that could be the basis of a decision affecting the employee's promotion, demotion, pay, awards, training, or removal will be provided to the employee under whatever administrative review rights are normally available to the employee. OPM has claimed no Privacy Act exemptions for the OPM/GOVT-2, Employee Performance File, system of records that contains performance ratings that are or could be used to affect an employee.

That labor organization also commented that OPM is not required by 5 U.S.C. 4702 to apply any specific methods and technologies (such as those requiring research ratings for their analyses) in Federal personnel management. While 5 U.S.C. 4702 does not require specific methods and technologies, OPM believes that its statutory requirement to perform research includes either directly or by implication the requirement to use those bona fide and professionally appropriate tools necessary to conduct such research, subject to any applicable statutes. Research performance ratings are such tools.

Additionally, the Office of Management and Budget's Guidelines on the Implementation of the Privacy Act (40 FR 28973, July 9, 1975) are instructive as to the interpretation of the (k)(4) exemption:

> This provision ((k)(4)) permits an agency head to exempt a system of records which is used only for statistical, research, or program evaluation purposes, and which is not used to make decisions on the rights, benefits, or entitlements of individuals * * *.
>
> Disclosure of statistical records (to the individual) in most instances would not provide any benefit to anyone, for these records do not have a direct effect on any given individual; it would, however, interfere with a legitimate, Congressionally sanctioned activity. (House Report 93-1416, p. 19).

The collection of information in OPM/GOVT-6 is sanctioned under 5 U.S.C. 4702. Maintenance and use of the

information is subject to section 552a(e)(10) of the Privacy Act requiring appropriate controls and safeguards to insure the security and confidentiality of information and avoidance of "harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained." OPM has instituted these required safeguards so that both the individual providing research ratings as well as rated employees are insured of confidentiality and fairness. In order to comply with the (e)(10) provision, OPM maintains the OPM/GOVT–6 records as a statistical system and applies the (k)(4) exemption to access or requests for amendment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of personnel records for certain civilian employees.

List of Subjects in 5 CFR Part 297

Administrative practice and procedure, Privacy.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is revising part 297 of title 5 of the Code of Federal Regulations to read as follows:

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

1. The authority citation for part 297 continues to read as follows:

Authority: Sec. 3, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. In § 297.501, the heading of paragraph (b)(8) is revised; the text of paragraph (b)(8) is redesignated as paragraph (b)(8)(i), and a new paragraph (b)(8)(ii) is added to read as follows:

§ 297.501 Exemptions

* * * * *

(b) * * *

(8) *Personnel Research and Test Validation Records (OPM/GOVT–6).*

(i) * * *

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(4) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to or amendment of the records by the data subject. This exemption is claimed because portions of this system relate to records required by statute to be maintained and used solely for statistical purposes. Access to or amendment of this information by the data subject would compromise the confidentiality of these records and their usefulness for statistical research purposes.

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[FR Doc. 92–11379 Filed 5–15–92; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001 and 1002

[DA–92–05]

Milk in the New England and New York-New Jersey Marketing Areas; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the months of April through June 1992 the provisions of the seasonal production incentive payment plans of the New England and New York-New Jersey Federal milk orders that require 30 cents in April and 40 cents in May and June to be deducted from payments to producers. The suspensions are necessary to increase the cash flow of dairy farmers this spring when some of them will be facing financial difficulties. The suspensions were requested by cooperative associations representing producers who provide much of the milk supply for the two markets.

EFFECTIVE DATE: April 1 through November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 27, 1992; published April 2, 1992 (57 FR 11276).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on dairy farmers and will have no impact on regulated handlers.

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

This suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with law and requesting a modification of an order or an exemption from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling in the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the orders regulating the handling of milk in the New England and New York-New Jersey marketing areas.

Notice of proposed rulemaking was published in the **Federal Register** on April 2, 1992 (57 FR 11276) concerning a proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Several comments were received and they are summarized in the statement of consideration.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of April through November 1992 the following provisions of the orders do not tend to effectuate the declared policy of the Act:

1. Paragraphs (c) and (d) of § 1001.62 and

2. Paragraph (d) and (e) of § 1002.61.

Statement of Consideration

The action suspends for the months of April through November 1992 the provisions of the New England and New York-New Jersey orders that require deductions from and additions to producer blend/uniform prices to be made for the purpose of encouraging dairy farmers to level out their production during the year. The provisions provide for the deduction of 20 cents per hundredweight from the blend/uniform price paid to producers to be made for the month of March, 30 cents for the month of April, and 40 cents for May and June. The funds retained from these deductions are then added to the pooled milk values under the two orders in the amounts of 25, 30 and 30 percent of the total deducted for the months of August, September and October, respectively. The remaining 15 percent plus interest earned on the aggregate funds is added for the month of November. By artificially depressing producer income in the spring and enhancing it above otherwise prevailing levels in the fall, the provisions provide an incentive to producers to level out the seasonality of their milk production to more closely reflect fluid milk demand patterns.

This action was not issued in time to eliminate the "take-out" for the month of March 1992, and so will eliminate the "take-out" for only the months of April through June. The suspension of the fall "pay-back" provisions will assure that monies withheld from producers for the month of March will be returned to them through the producer settlement fund before the fall "pay-back" months.

The suspensions were requested on behalf of ten cooperative associations representing over 80 percent of the producers associated with the New England Order and nearly one-third of the producers on the New York-New Jersey order. The cooperative associations proposing the suspensions are Agri-Mark, Inc., Atlantic Dairy Cooperative, Inc., Cabot Farmers Cooperative Creamery, Inc., Chateaugay Cooperative Marketing Association, Inc., Dairylea Cooperative, Inc., Eastern Milk Producers Cooperative Association, Inc., Franklin-St. Lawrence Cooperative, Inc., Konhokton Milk Producers Cooperative Association, Inc., Middlebury Milk Producers Cooperative Association, Inc. and Sullivan County Dairy Association, Inc. In addition, the Regional Cooperative Marketing Agency (RCMA), representing approximately 20,000 dairy farmer members in eleven northeastern states, supported the suspension request, increasing producer support for the suspension to 90 percent of the producers whose milk is pooled under the two orders.

Proponents contend the suspensions are needed because of the recent significant decline in the Minnesota-Wisconsin price, the price series on which Federal order prices are based. Because of the lagged effect of the Minnesota-Wisconsin price on Class I and Class II prices, and therefore on prices paid to producers, price declines experienced through the month of March are expected to result in reduced producer returns during the season when farmers' cash requirements are at their seasonal peak. The additional reduction of pay prices to producers this spring due to operation of the seasonal incentive plan, beyond that resulting from the effect of recent reductions in the Minnesota-Wisconsin price, can be expected to accentuate the cost/price squeeze being experienced by farmers.

Nine comments were filed by interested parties in response to the invitation in the notice proposing this action. The action was supported by five of the commentors, including the group of cooperatives requesting the suspension, Kraft General Foods, RCMA, Oneida-Lewis Milk Producers Cooperative and the Vermont State Commissioner of Agriculture. The Oneida-Lewis comments pointed out that the action would have no impact on handler income or expense, while the Vermont Agriculture Commissioner stated that the Northeast suffered a drought in the summer of 1991 that reduced forage and corn crops, increasing feed costs for the spring of 1992.

Four comments opposing the suspension were received from Allied Federated Cooperatives, a federation of 29 independent cooperatives headquartered in New York which represents 1,400 dairy farmers, from the presidents of Canajoharie Cooperative Milk Producers, Inc., and Champlain Milk Producers Cooperative, Inc., two of its member cooperatives, and from a dairy economist with a financial interest in a Vermont dairy farm.

The comments argued that many producers have made a concerted effort over the years to tailor their milk production to the needs of the marketplace, and should not be asked to give up the benefits they have earned for producing fall milk. In addition, the comments pointed out that original price forecasts for the spring months that will be affected by the suspension have been increased, even by proponents of the suspension.

Further, the Canajoharie president's comments stated that moving money around within the year (in this case, from fall to spring) does not create any new money, and that market statistics show that a seasonality incentive program is still needed. The dairy economist argued that by the time a suspension order could be issued, all of March and most of April milk would have been delivered to handlers.

It is evident from the comments received that there is widespread support for this action among producers supplying these two markets. Commentors point out that the position of some dairy farmers is such that they cannot afford to take lower returns in the spring in exchange for higher prices in the fall.

Although milk prices have declined markedly in the last several months, there are indications that the Minnesota-Wisconsin price may have reached its low point for the marketing year. Even so, the delayed effect of the Minnesota-Wisconsin price on Federal order Class I prices, and consequently, on producer blend/uniform prices, will be a depressing effect for the months covered by the "take-out" provisions. Normal seasonal price variations will result in increased prices in the fall months, when the seasonal payments plants would operate to enhance prices to producers. Therefore, producers who have made an effort to shift production from spring to fall should benefit from higher prices in the coming fall months.

Therefore, the seasonal incentive plans of the two markets are hereby suspended for the months of April through November 1992. Because of the expected seasonal variation in prices over the remainder of 1992, it is unlikely that dairy farmers who have made a long-term effort to shift production from spring to fall will abandon such a production pattern.

Suggestions by the proponent cooperatives and by Oneida-Lewis Milk Producers Cooperative that the money withheld from producers under the orders' "takeout" provisions be repaid in the April or May marketwide pools will be implemented by suspending the "payback" provisions. As a result, the monies withheld in payment for March

milk will be added into the producer settlement fund, and be included in the uniform/blend price computation.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing areas in that the action lessens the regulatory impact of the orders on dairy farmers and will have no impact on regulated handlers;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Four comments were filed in opposition to this action and the issues raised therein are dealt with in the statement of consideration.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register.**

List of Subjects in 7 CFR Parts 1001 and 1002

Milk marketing orders.

It is Therefore ordered, That the following provisions in 7 CFR Parts 1001 and 1002 are suspended from April 1 through November 30, 1992.

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. The authority citation for 7 CFR parts 1001 and 1002 continues to read as follows:

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

§ 1001.62 [Amended]

2. § 1001.62 (c) and (d) are suspended for the months April 1 through November 30, 1992.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

§ 1002.6 [Amended]

3. § 1002.61 (d) and (e) are suspended for the months April 1 through November 30, 1992.

Dated May 12, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–11579 Filed 5–15–92; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0694]

RIN 7100–AB12

Bank Holding Companies and Change in Bank Control Leasing Personal Property

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Y to expand the leasing activities that are generally permissible for bank holding companies. The rule allows bank holding companies to enter into leasing transactions in which the companies may rely for compensation of their full leasing costs, at the inception of the initial lease, on estimated residual values for the leased property of up to 100 percent of the acquisition cost of the property, subject to certain conditions (so-called "higher residual value leasing"). The Board has by order previously permitted bank holding companies to engage in higher residual value leasing. The final rule requires that higher residual value leasing transactions conform to the current leasing provision in Regulation Y except with respect to the residual value reliance limitation. The final rule contains additional requirements applicable only to the expanded leasing activity. These requirements include a limit on the volume of such leasing transactions similar to the limitation placed on the leasing activities of national banks under section 108 of the Competitive Equality Banking Act (CEBA), amending the National Bank Act.

The final rule also alters the existing authority for a bank holding company to engage in full-payout leasing transactions by permitting bank holding companies to engage in these transactions and rely for compensation of their full leasing costs, at the inception of the initial lease, on estimated residual values for the leased property of up to 25 percent of the acquisition cost of the property.

EFFECTIVE DATE: May 14, 1992.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), Thomas M. Corsi, Senior Attorney (202/452–3275), Donna R. Nordenberg, Attorney (202/452–3281), Legal Division; Molly S. Wassom, Manager, Applications Issues (202/452–2305), or Theresa A. Claffey, Supervisory Financial Analyst (202/452–2964), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Since 1971, bank holding companies have been permitted to engage in leasing personal or real property where the lease is the functional equivalent of an extension of credit (so-called "full-payout leasing"). Under Regulation Y, full-payout leases must be on a nonoperating basis and only upon the order of customers.[1] In addition, at the inception of the initial lease, the effect of the transaction must yield a return that will compensate the bank holding company for its full leasing costs (including the total cost of financing the property) through rentals, estimated tax benefits, and the estimated residual value of the property at the expiration of the initial term of the lease. In calculating this yield, the existing regulation limits reliance on estimated residual values to a maximum of 20 percent of the acquisition cost of the property. In the case of a personal property lease of no more than seven years in duration, bank holding companies may rely on an additional amount, up to 60 percent of the property's acquisition cost, if the residual value is guaranteed by the lessee or a third party.

In 1987, section 108 of CEBA amended the National Bank Act to authorize national banks specifically to lease tangible personal property so long as the leases are on a "net lease basis" and represent, in the aggregate, no more than 10 percent of the bank's assets.[2] The legislative history indicates that this amendment was intended to permit the Office of the Comptroller of the Currency (OCC) to relax or eliminate, in a manner consistent with sound banking practices, the residual value limitation in the OCC's existing regulations authorizing personal property leasing activities by national banks.[3] The legislative history of section 108 also indicates that the section is not intended to allow national banks to engage in the

[1] 12 CFR 225.25(b)(5). The nonoperating condition places the responsibilities for the leased property's care and maintenance upon the customer. In such lease arrangements, the lessor may not provide or pay for operational services such as repair and insurance.

[2] See 12 U.S.C. 24 (Tenth). The OCC has interpreted the term "net lease basis" to mean that the lease must be on a nonoperating basis.

[3] S. Rep. No. 19, 100th Cong., 1st Sess. 43 (1987).