

Rules and Regulations

Federal Register

Vol. 63, No. 150

Wednesday, August 5, 1998

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1631

Availability of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a final rule amending the Board's Freedom of Information Act regulations to implement the Electronic Freedom of Information Act Amendments of 1996. The rule provides for expedited processing of certain requests and enlarges the time for responding to initial requests. The rule also provides the address for the Board's electronic reading room and adds a category of documents to be made available in the reading room. In addition, the rule updates the fees charged to search for records.

EFFECTIVE DATES: September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005; (202) 942-1662; FAX (202) 942-1676.

SUPPLEMENTARY INFORMATION: Section 4 of the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Pub. L. 104-231, section 4, 110 Stat. 3048, 3049, amended 5 U.S.C. 552(a)(2) to require Federal agencies to make documents available in electronic form. In accordance with this requirement, the rule amends 5 CFR 1631.4 to provide the address of the Board's electronic reading room. The Board maintains a reading area with paper documents that is open to the public. The Board also maintains a business Web site at <http://www.frtib.gov> which contains, in addition to business information, its

electronic reading room. The Board maintains a Web site at <http://www.tsp.gov> to provide program information about the Thrift Savings Plan, and that site is linked to the business site. Both Web sites contain documents in readily accessible electronic form which can be downloaded by the requester. In accordance with the EFOIA, the Board will add to its reading area and Web site those records that it determines are repeatedly requested under the Freedom of Information Act (FOIA). A list of such records will be maintained on the Board's business Web site.

Section 3 of the EFOIA, 110 Stat. at 3051-52, amended 5 U.S.C. 552(a)(E)(6) to require Federal agencies to promulgate rules on expedited processing of FOIA requests in cases of compelling need or in other cases determined by the agency. To implement this requirement, the rule adds new paragraphs (f) and (g) to 5 CFR 1631.6 to set forth the circumstances under which the Board will honor a request for expedited processing and establishes procedures for expediting requests. The rule amends 5 CFR 1631.8(a) to advise that a determination whether to provide expedited processing of a request will be made within 10 work days. The Board normally processes FOIA requests on a first-in, first-out basis. If a request for expedited processing is approved, that request will be processed ahead of other requests. In addition, the rule amends 5 CFR 1631.8(b) and (c) to implement the new 20-day time limit for responding to initial requests for records and to provide procedures the Board will follow if additional time is needed to process a request for records.

The rule amends 5 CFR 1631.10 to provide procedures for processing appeals of requests for expedited processing, to distinguish procedures for handling a request for expedited processing from procedures for processing an appeal of a request for records, and to state that an appeal from the denial of a request for expedited processing will be handled within five work days of receipt in the Office of General Counsel.

The rule also amends 5 CFR 1631.11 and 1631.14 to increase the benefits factor which, along with the employee's salary, determines the amount the Board will charge to search for records.

Sections 1631.11 and 1631.14 currently provide for charging the salary rate of the employee who conducts the search plus 16 percent for benefits. The benefits factor was set at 16 percent based on an Office of Management and Budget FOIA fee schedule and guidelines published in the **Federal Register** on March 27, 1987 (52 FR 10012, 10013), and it has not been revised since that time. For Board employees, the current benefits rate is 23.5 percent. Included in this rate are retirement contributions, Social Security taxes, health and life insurance premiums, and lump sum awards and bonuses.

Finally, 5 CFR 1631.18 is amended to address the new annual reporting requirement imposed by section 10 of the EFOIA, 110 Stat. at 3053-54, which will be codified at 5 U.S.C. 552(e).

In the June 1, 1998, **Federal Register** (63 FR 29672), the Board published a proposed rule with these amendments. No comments were received; therefore, the Board is publishing this rule as a final rule without change.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They require the Board to disclose information in certain instances and to address when and the form in which information will be disclosed.

Paperwork Reduction Act

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

Unfunded Mandates Reform Act of 1995

Under the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104-4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. These regulations will not compel the expenditure in any one year of \$100 million or more by any State, local, and tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

List of Subjects in 5 CFR Part 1631

Administrative practice and procedure, Courts, Freedom of information, Government employees.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, 5 CFR Part 1631 is amended to read as follows:

PART 1631—AVAILABILITY OF RECORDS

1. The authority citation for part 1631 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1631.4 is amended by revising paragraph (a) to read as follows:

§ 1631.4 Public reference facilities and current index.

(a) The Board maintains a public reading area located in room 4308 at 1250 H Street, NW, Washington, DC. Reading area hours are from 9:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of Federal holidays. Electronic reading room documents are available through <http://www.frtib.gov>. In the reading area and through the Web site, the Board makes available for public inspection, copying, and downloading materials required by 5 U.S.C. 552(a)(2), including documents published by the Board in the **Federal Register** which are currently in effect.

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3. Section 1631.6 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 1631.6 How to request records—form and content.

* * * * *

(f) When a person requesting expedited access to records has demonstrated a compelling need, or when the Board has determined that it is appropriate to expedite its response, the Board will process the request ahead of other requests.

(g) To demonstrate compelling need in accordance with paragraph (f) of this section, the requester must submit a written statement that contains a certification that the information provided therein is true and accurate to the best of the requester's knowledge and belief. The statement must demonstrate that:

(1) The failure to obtain the record on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is a person primarily engaged in the dissemination of

information, and there is an urgent need to inform the public concerning an actual or alleged Federal Government activity that is the subject of the request.

4. Section 1631.8 is revised to read as follows:

§ 1631.8 Prompt response.

(a)(1) When the FOIA Officer receives a request for expedited processing, he or she will determine within 10 work days whether to process the request on an expedited basis.

(2) When the FOIA Officer receives a request for records which he or she, in good faith, believes is not reasonably descriptive, he or she will so advise the requester within 5 work days. The time limit for processing such a request will not begin until receipt of a request that reasonably describes the records being sought.

(b) The FOIA Officer will either approve or deny a reasonably descriptive request for records within 20 work days after receipt of the request, unless additional time is required for one of the following reasons:

(1) It is necessary to search for and collect the requested records from other establishments that are separate from the office processing the request (e.g., the record keeper);

(2) It is necessary to search for, collect, and examine a voluminous amount of records which are demanded in a single request;

(3) It is necessary to consult with another agency which has a substantial interest in the determination of the request or to consult with two or more offices of the Board which have a substantial subject matter interest in the records; or

(4) It is necessary to devote resources to the processing of an expedited request under § 1631.6(f).

(c) When additional time is required for one of the reasons stated in paragraph (b) of this section, the FOIA Officer will extend this time period for an additional 10 work days by written notice to the requester. If the Board will be unable to process the request within this additional time period, the requester will be notified and given the opportunity to—

(1) Limit the scope of the request; or

(2) Arrange with the FOIA Officer an alternative time frame for processing the request.

5. Section 1631.10 is revised to read as follows:

§ 1631.10 Appeals to the General Counsel from initial denials.

(a) When the FOIA Officer has denied a request for expedited processing or a request for records, in whole or in part,

the person making the request may, within 30 calendar days of receipt of the response of the FOIA Officer, appeal the denial to the General Counsel. The appeal must be in writing, addressed to the General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005, and be clearly labeled as a "Freedom of Information Act Appeal."

(b)(1) The General Counsel will act upon the appeal of a denial of a request for expedited processing within 5 work days of its receipt.

(2) The General Counsel will act upon the appeal of a denial of a request for records within 20 work days of its receipt.

(c) The General Counsel will decide the appeal in writing and mail the decision to the requester.

(d) If the appeal concerns an expedited processing request and the decision is in favor of the person making the request, the General Counsel will order that the request be processed on an expedited basis. If the decision concerning a request for records is in favor of the requester, the General Counsel will order that the subject records be promptly made available to the person making the request.

(e) If the appeal of a request for expedited processing of records is denied, in whole or in part, the General Counsel's decision will set forth the basis for the decision. If the appeal of a request for records is denied, in whole or in part, the General Counsel's decision will set forth the exemption relied on and a brief explanation of how the exemption applies to the records withheld and the reasons for asserting it, if different from the reasons described by the FOIA Officer under § 1631.9. The denial of a request for records will state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in Federal court. (A Federal court does not have jurisdiction to review a denial of a request for expedited processing after the Board has provided a complete response to the request.)

(f) No personal appearance, oral argument, or hearing will ordinarily be permitted in connection with an appeal of a request for expedited processing or an appeal for records.

(g) On appeal of a request concerning records, the General Counsel may reduce any fees previously assessed.

§ 1631.11 [Amended]

6. In section 1631.11 amend paragraph (a)(4) by removing the phrase "plus 16 percent" in the second sentence and adding the phrase "plus 23.5 percent" in its place.

§ 1631.13 [Amended]

7. In section 1631.13 amend paragraph (c) by removing the number "10" and adding in its place the number "20".

§ 1631.14 [Amended]

8. In section 1631.14 amend the first sentence of paragraph (a) and the second sentence of paragraph (b) by removing the phrase "plus 16 percent" and adding the phrase "plus 23.5 percent" in its place.

9. Section 1631.18 is revised to read as follows:

§ 1631.18 Annual report.

The Executive Director will submit annually, on or before February 1, a Freedom of Information report covering the preceding fiscal year to the Attorney General of the United States. The report will include matters required by 5 U.S.C. 552(e).

[FR Doc. 98-20876 Filed 8-4-98; 8:45 am]

BILLING CODE 6760-01-P

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 981**

[Docket No. FV98-981-1 FR]

Almonds Grown in California; Revision of Requirements Regarding Quality Control Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the administrative rules and regulations of the California almond marketing order (order) pertaining to the quality control program. The order regulates the handling of almonds grown in California, and is administered locally by the Almond Board of California (Board). Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to accepted users of such product. Accepted users are approved annually by the Board. This rule clarifies conditions upon which accepted users' status may be denied or revoked by the Board. This rule will help to ensure that inedible almonds are removed from human consumption channels, thereby

maintaining the integrity of the quality control provisions of the order.

EFFECTIVE DATE: This final rule becomes effective August 6, 1998.

FOR FURTHER INFORMATION CONTACT:

Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule 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 608c(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 in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the 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 or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not

later than 20 days after date of the entry of the ruling.

This final rule revises the administrative rules and regulations pertaining to a quality control program under the California almond order. This rule was unanimously recommended by the Board, and clarifies conditions under which the Board may deny or revoke the status of accepted users of inedible almonds.

Section 981.42 of the order provides authority for a quality control program. Section 981.42(a) requires handlers to obtain incoming inspection on almonds received from growers to determine the percent of inedible kernels in each lot of any variety. Handlers are required to report such inedible determination for each lot received to the Board. Section 981.42(a) also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of the order's quality control provisions.

Section 981.442 of the order's administrative rules and regulations specifies that the weight of inedible kernels in each lot of any variety of almonds in excess of 1 percent of the kernel weight received by a handler shall constitute such handler's inedible disposition obligation. Handlers are required to deliver inedible kernels accumulated in the course of processing to Board-approved accepted users of such product in order to satisfy the disposition obligation. Accepted users then dispose of inedible kernels to non-human consumption outlets. Because inedible kernels are considered unfit for human consumption, requiring handlers to meet this obligation helps to ensure that each handler's outgoing shipments of almonds are relatively free of almonds with serious damage, and the number of kernels with minor damage should be minimal.

Accepted users of inedible almonds file an application with the Board specifying certain terms and conditions with which they will voluntarily abide. The application also indicates they will dispose of the inedible almonds received from handlers in one or more of the following manners: crushing into oil; manufacturing into animal feed; or feeding directly to animals. The Board staff reviews and approves accepted user applications on an annual basis.

Section 981.442(a)(7) of the rules and regulations lists eligibility criteria for accepted users. These criteria are applied by the Board when reviewing and approving accepted users. However, the regulations do not specifically address when the Board may deny or revoke accepted user status. Situations