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## OFFICE OF SPECIAL COUNSEL

### 5 CFR Part 1800

#### Revision of Regulations To Describe Filing Requirements and Options, Including Electronic Filing

**AGENCY:** U.S. Office of Special Counsel.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Special Counsel (OSC) is revising its regulations on filing to state filing requirements and options more clearly and to provide information on where to find instructions for electronic filing with OSC.

**DATES:** This rule will be effective December 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Stackhouse, General Law Counsel, in writing at: U.S. Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street NW., Suite 218, Washington, DC 20036-4505; by telephone at (202) 653-8971; or by facsimile at (202) 653-5151.

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Special Counsel (OSC) is revising its regulations governing filing of: (1) complaints of prohibited personnel practices or other prohibited activity; (2) disclosures of information; and (3) requests for advisory opinions on the Hatch Act, under 5 CFR 1800.1, 1800.2, and 1800.3. These revisions are intended to more clearly describe the requirements and options for filing complaints, disclosures and requests for advisory opinions, and to direct potential filers to OSC's web site for information and instructions on electronic filing of complaints and disclosures (at <http://www.osc.gov>). The Government Paperwork Elimination Act (GPEA, Pub. L. 105-277) requires Federal agencies to provide individuals or entities that deal with agencies the option to submit information or transact with the agency electronically, and to

maintain records electronically, when practicable. OSC has been working to comply with GPEA in stages by first offering complaint and disclosure forms to be printed from OSC's web site; then adding the capability of filling the forms out on-line and submitting them by mail or fax to OSC; and finally by offering electronic filing. These options are described on the OSC Web site at <http://www.osc.gov> (under "Forms"). This revision of OSC regulations on filing complaints and disclosures with OSC is intended to present clear information on all available options for such filings.

#### Procedural Determinations

**Administrative Procedure Act (APA)**  
This action is taken under the Special Counsel's authority, at 5 U.S.C. 1212(e), to publish regulations in the Federal Register. Under the Administrative Procedure Act, at 5 U.S.C. 553(b)(3)(B), statutory procedures for agency rulemaking do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." OSC finds that such notice and public procedure are unnecessary and contrary to the public interest because: (1) these revisions more clearly describe filing options at OSC; and (2) the public benefits from early notice of additional filing options, and further delay is unnecessary and contrary to the public interest.

**Congressional Review Act (CRA):** OSC has determined that these revisions are non-major under the Congressional Review Act, and is submitting a report on this final rule to Congress and the General Accounting Office pursuant to the act. The rule is effective December 1, 2003, as permitted by 5 U.S.C. 808.

**Regulatory Flexibility Act (RFA):** The Regulatory Flexibility Act does not apply, as this rule is not subject to notice and comment procedures under the APA.

**Paperwork Reduction Act (PRA):** OSC has received OMB approval of the Forms OSC-11 and OSC-12, which are referenced in the regulations, for use through August 31, 2006, including use of these forms for electronic filing.

**Unfunded Mandates Reform Act (UMRA):** This proposed revision does not impose any Federal mandates on State, local, or tribal governments, or on

the private sector within the meaning of the UMRA.

**Executive Order 12866 (Regulatory Planning and Review):** OSC anticipates that the economic impact of this revision will be insignificant. Thus this proposed revision is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order.

**Executive Order 12988 (Civil Justice Reform):** This proposed rule meets applicable standards of section 3(a) and 3(b)(2) of Executive Order 12988.

**Executive Order 13132 (Federalism):** This proposed revision does not have new federalism implications under Executive Order 13132. The Hatch Act, at title 5 of the U.S. Code, chapter 15, prohibits certain political activities of covered state and local government employees. The OSC has jurisdiction to issue advisory opinions on political activity by those employees, and to bring an enforcement action before the Merit Systems Protection Board for prohibited activity by a covered state or local government employee. However, this proposed revision does not substantively affect the rights of state and local government employees. Rather, these revised regulations simply provide information on options for filing an allegation of a violation of the Hatch Act, or a request for an advisory opinion on the Hatch Act with OSC.

#### List of Subjects in 5 CFR Part 1800

Administrative practice and procedure, Government employees, Investigations, Law enforcement, Political activities (Government employees), Reporting and recordkeeping requirements, Whistleblowing.

■ For the reasons stated in the preamble, OSC amends 5 CFR part 1800 as follows:

#### PART 1800—FILING OF COMPLAINTS AND ALLEGATIONS

■ 1. The authority citation for Part 1800 continues to read as follows:

**Authority:** 5 U.S.C. 1212(e).

■ 2. Section 1800.1 is revised to read as follows:

**§ 1800.1 Filing complaints of prohibited personnel practices or other prohibited activities.**

(a) *Prohibited personnel practices.* The Office of Special Counsel (OSC) has investigative jurisdiction over the following prohibited personnel practices committed against current or former Federal employees and applicants for Federal employment:

(1) Discrimination, including discrimination based on marital status or political affiliation (*see* §1810.1 of this chapter for information about OSC's deferral policy);

(2) Soliciting or considering improper recommendations or statements about individuals requesting, or under consideration for, personnel actions;

(3) Coercing political activity, or engaging in reprisal for refusal to engage in political activity;

(4) Deceiving or obstructing anyone with respect to competition for employment;

(5) Influencing anyone to withdraw from competition to improve or injure the employment prospects of another;

(6) Granting an unauthorized preference or advantage to improve or injure the employment prospects of another;

(7) Nepotism;

(8) Reprisal for whistleblowing (whistleblowing is generally defined as the disclosure of information about a Federal agency by an employee or applicant who reasonably believes that the information shows a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety);

(9) Reprisal for:

(i) Exercising certain appeal rights;

(ii) Providing testimony or other assistance to persons exercising appeal rights;

(iii) Cooperating with the Special Counsel or an Inspector General; or

(iv) Refusing to obey an order that would require the violation of law;

(10) Discrimination based on personal conduct not adverse to job performance;

(11) Violation of a veterans' preference requirement; and

(12) Taking or failing to take a personnel action in violation of any law, rule, or regulation implementing or directly concerning merit system principles at 5 U.S.C. 2301(b).

(b) *Other prohibited activities.* OSC also has investigative jurisdiction over allegations of the following prohibited activities:

(1) Violation of the Federal Hatch Act at title 5 of the U.S. Code, chapter 73, subchapter III;

(2) Violation of the state and local Hatch Act at title 5 of the U.S. Code, chapter 15;

(3) Arbitrary and capricious withholding of information prohibited under the Freedom of Information Act at 5 U.S.C. 552 (except for certain foreign and counterintelligence information);

(4) Activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking;

(5) Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action (unless the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure); and

(6) Violation of uniformed services employment and reemployment rights under 38 U.S.C. 4301, *et seq.*

(c) *Procedures for filing complaints alleging prohibited personnel practices or other prohibited activities (other than the Hatch Act).*

(1) Current or former Federal employees, and applicants for Federal employment, may file a complaint with OSC alleging one or more prohibited personnel practices, or other prohibited activities within OSC's investigative jurisdiction. Form OSC-11 ("Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity") must be used to file all such complaints (except those limited to an allegation or allegations of a Hatch Act violation - *see* paragraph (d) of this section for information on filing Hatch Act complaints).

(2) Part 2 of Form OSC-11 must be completed in connection with allegations of reprisal for whistleblowing, including identification of:

(i) Each disclosure involved;

(ii) The date of each disclosure;

(iii) The person to whom each disclosure was made; and

(iv) The type and date of any personnel action that occurred because of each disclosure.

(3) Except for complaints limited to alleged violation(s) of the Hatch Act, OSC will not process a complaint filed in any format other than a completed Form OSC-11. If a filer does not use Form OSC-11 to submit a complaint, OSC will provide the filer with information about the form. The complaint will be considered to be filed on the date on which OSC receives a completed Form OSC-11.

(4) Form OSC-11 is available:

(i) By writing to OSC, at: Office of Special Counsel, Complaints Examining Unit, 1730 M Street NW., Suite 218, Washington, DC 20036-4505;

(ii) By calling OSC, at: (800) 872-9855 (toll-free), or (202) 653-7188 (in the Washington, DC area); or

(iii) Online, at: <http://www.osc.gov> (to print out and complete on paper, or to complete online).

(5) A complainant can file a completed Form OSC-11 with OSC by any of the following methods:

(i) By mail, to: Office of Special Counsel, Complaints Examining Unit, 1730 M Street NW., Suite 218, Washington, DC 20036-4505;

(ii) By fax, to: (202) 653-5151; or

(iii) Electronically, at: <http://www.osc.gov>.

(d) *Procedures for filing complaints alleging violation of the Hatch Act.*

(1) Complaints alleging a violation of the Hatch Act may be submitted in any written form, but should include:

(i) The complainant's name, mailing address, telephone number, and a time when OSC can contact that person about his or her complaint (unless the matter is submitted anonymously);

(ii) The department or agency, location, and organizational unit complained of; and

(iii) A concise description of the actions complained about, names and positions of employees who took the actions, if known to the complainant, and dates of the actions, preferably in chronological order, together with any documentary evidence that the complainant can provide.

(2) A written Hatch Act complaint can be filed with OSC by any of the methods listed in paragraph (c)(5)(i)-(iii) of this section.

■ 3. Section 1800.2 is revised to read as follows:

**§ 1800.2 Filing disclosures of information.**

(a) *General.* OSC is authorized by law (at 5 U.S.C. 1213) to provide an independent and secure channel for use by current or former Federal employees and applicants for Federal employment in disclosing information that they reasonably believe shows wrongdoing by a Federal agency. OSC must determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. If it does, the law requires OSC to refer the information to the agency head involved for investigation and a written report on the findings to the Special Counsel. The law

does not authorize OSC to investigate the subject of a disclosure.

(b) *Procedures for filing disclosures.* Current or former Federal employees, and applicants for Federal employment, may file a disclosure of the type of information described in paragraph (a) of this section with OSC. Such disclosures must be filed in writing (including electronically - see paragraph (b)(3)(iii) of this section).

(1) Filers are encouraged to use Form OSC-12 ("Disclosure of Information") to file a disclosure of the type of information described in paragraph (a) of this section with OSC. This form provides more information about OSC jurisdiction, and procedures for processing whistleblower disclosures. Form OSC-12 is available:

(i) By writing to OSC, at: Office of Special Counsel, Disclosure Unit, 1730 M Street NW., Suite 218, Washington, DC 20036-4505;

(ii) By calling OSC, at: (800) 572-2249 (toll-free), or (202) 653-9125 (in the Washington, DC area); or

(iii) Online, at: <http://www.osc.gov> (to print out and complete on paper, or to complete online).

(2) Filers may use another written format to submit a disclosure to OSC, but the submission should include:

(i) The name, mailing address, and telephone number(s) of the person(s) making the disclosure(s), and a time when OSC can contact that person about his or her disclosure;

(ii) The department or agency, location and organizational unit complained of; and

(iii) A statement as to whether the filer consents to disclosure of his or her identity by OSC to the agency involved, in connection with any OSC referral to that agency.

(3) A disclosure can be filed in writing with OSC by any of the following methods:

(i) By mail, to: Office of Special Counsel, Disclosure Unit, 1730 M Street NW., Suite 218, Washington, DC 20036-4505;

(ii) By fax, to: (202) 653-5151; or

(iii) Electronically, at: <http://www.osc.gov>.

■ 4. Section 1800.3 is revised to read as follows:

#### § 1800.3 Advisory opinions.

The Special Counsel is authorized to issue advisory opinions only about political activity of state or local officers and employees (under title 5 of the United States Code, at chapter 15), and political activity of Federal officers and employees (under title 5 of the United States Code, at chapter 73, subchapter III). A person can seek an advisory

opinion from OSC by any of the following methods:

(a) By phone, at: (800) 854-2824 (toll-free), or (202) 653-7143 (in the Washington, DC area);

(b) By mail, to: Office of Special Counsel, Hatch Act Unit, 1730 M Street NW., Suite 218, Washington, DC 20036-4505;

(c) By fax, to: (202) 653-5151; or

(d) By e-mail, to: [hatchact@osc.gov](mailto:hatchact@osc.gov).

Dated: November 20, 2003

**William E. Reukauf,**

*Acting Special Counsel.*

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**BILLING CODE 7405-01-S**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1032

[Docket No. DA-01-07; AO-313-A44]

#### Milk in the Central Marketing Area; Order Amending the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, without change, an interim final rule concerning pooling provisions of the Central milk order. More than the required number of producers in the Central marketing area have approved the issuance of the final order amendments.

**EFFECTIVE DATE:** December 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jack Rower or Carol S. Warlick, Marketing Specialists, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 720-2357, e-mail address: [jack.rower@usda.gov](mailto:jack.rower@usda.gov), or (202) 720-9363, e-mail address: [carol.warlick@usda.gov](mailto:carol.warlick@usda.gov).

**SUPPLEMENTARY INFORMATION:** This document adopts as a final rule, without change, an interim final rule concerning pooling provisions of the Central milk order. Specifically, this final rule continues to amend the *Pool plant* provisions which: Establish lower but year-round supply plant performance standards; do not consider the volume of milk shipments to distributing plants regulated by another Federal milk order as a qualifying shipment on the Central order; exclude from receipts diverted milk made by a pool plant to another pool plant in determining pool plant

diversion limits; and establish a "net shipments" provision for milk deliveries to distributing plants. For *Producer milk*, this final rule continues to adopt amendments which: Establish higher year-round diversion limits; base diversion limits for supply plants on deliveries to Central order distributing plants; and eliminate the ability to simultaneously pool the same milk on the Central order and a State-operated milk order that has marketwide pooling.

This administrative rule is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), 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 request modification or exemption from such order by filing with the Department of Agriculture (USDA) 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department 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 its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.