

**PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT**

1. The authority citation for 21 CFR part 1220 continues to read as follows:

**Authority:** 21 U.S.C. 41–50; 19 U.S.C. 1311.

2. Section 1220.40 is amended by revising paragraph (a) to read as follows:

**§ 1220.40 Tea standards.**

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on February 28, 1995, are hereby fixed and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1995, and ending April 30, 1996:

(1) Black Tea (for all teas except those from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, Turkey, and Argentina).

(2) Black Tea (for Argentina teas).

(3) Black Tea (for teas from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, and Turkey).

(4) Green Tea (of all origins).

(5) Formosa Oolong.

(6) Canton Oolong (for all Canton types from the People's Republic of China (China) and Taiwan (Formosa)).

(7) Scented Black Tea.

(8) Spiced Tea.

These standards apply to tea shipped from abroad on or after May 1, 1995.

\* \* \* \* \*

Dated: May 31, 1995.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

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**DEPARTMENT OF STATE****22 CFR Part 21**

[Pub. Not. 2210]

**Office of the Legal Adviser;  
Indemnification of Department of State Employees**

**AGENCY:** Department of State.

**ACTION:** Final rule and statement of policy.

**SUMMARY:** This statement announces a Department of State policy to permit payment of Department funds to indemnify Department employees who suffer adverse money judgments as a result of acts within the scope of their employment and to settle personal damages claims involving such acts, as determined by the Under Secretary for

Management or his or her designee. This rule is similar to regulations adopted by other Federal agencies, including the Department of Justice (28 CFR part 50), the Department of the Treasury (31 CFR part 3) and the Agency for International Development (22 CFR part 207).

**EFFECTIVE DATE:** June 7, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Jean Bailly, Attorney-Adviser, Office of the Assistant Legal Adviser for Legislation and Management, U.S. Department of State, (202) 647–5154.

**SUPPLEMENTARY INFORMATION:** Lawsuits against federal employees in their individual capacities have proliferated since the 1971 Supreme Court decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388. These suits personally attack officials at all levels of government and target many federal activities, particularly law enforcement. The Federal Liability Reform and Tort Compensation Act of 1988, Public Law 100–694, permits substitution of the Government in many personal liability tort suits against officials. However, substitution is not possible in some cases, notably claims arising under the Constitution and claims arising under foreign law. Although the Department has had few such cases, the risk of personal liability and the burden of defending suits for money damages is clearly present for Department employees. An adverse judgment in such a case has detrimental consequences to the employee, both monetary and otherwise. Fear of personal liability also has potentially adverse consequences for State Department operations, decisionmaking, and policy determinations. The prospect of personal liability, and even the uncertainty as to what conduct may result in a lawsuit against an employee personally, may tend to intimidate employees and stifle initiative and decisive action.

The Department believes a policy with respect to indemnification in such cases will serve to minimize this impediment to Department operations and would accord Department employees the same protection now enjoyed by most state and local government employees as well as those of most corporate employers. This policy is supported by the general principle that an agency has the authority to expend appropriated funds to further the mission of the agency and the objectives underlying the appropriation. Pursuant to this principle, the Department of State believes that indemnification is related both to the Department's mission and to

the objectives underlying its general appropriations.

The indemnification policy will permit, but does not require, the Department to indemnify a Department employee who faces an adverse verdict, judgment or other monetary award, provided that the actions giving rise to the judgment were taken within the scope of employment and that such indemnification is in the interest of the United States, as determined by the Under Secretary for Management or his or her designee.

Absent exceptional circumstances, the Department will not agree either to indemnify or to settle a case before entry of an adverse judgment. This approach is intended to discourage the filing of lawsuits against federal employees in their individual capacities solely in order to pressure the Government into settlement. In the usual case, the Department will not settle a case before trial and judgment merely because a dispositive motion filed on behalf of the employee has been denied.

Personal services contractors are considered employees for purposes of this policy. This policy is applicable to any actions pending against Department employees as of its effective date.

In addition to the general indemnification provisions contained in these proposed regulations, the Department will follow its more specific indemnification policy with respect to damages awarded against Department health care personnel for malpractice claims within the scope of 22 U.S.C. 2702. The Department anticipates publishing regulations relating to this policy of indemnification.

**Paperwork Reduction Act**

This regulation is not subject to the Paperwork Reduction Act because it deals solely with internal Department rules governing personnel.

**Cost/Regulatory Analysis**

Because this rule relates solely to agency management and personnel, it is not subject to the notice and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553). It is likewise exempt from the procedures of E.O. 12866 (Regulatory Planning and Review). Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612) do not apply.

**List of Subjects in 22 CFR Part 21**

Administrative practice and procedure, Government employees, Tort claims.

Accordingly, 22 CFR is hereby amended by adding a new part 21 as follows:

## **PART 21—INDEMNIFICATION OF EMPLOYEES**

**Authority:** 5 U.S.C. 301; 22 U.S.C. 2658.

### **§ 21.1. Policy.**

(a) The Department of State may indemnify an employee for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(b) The Department of State may settle or compromise a personal damages claim against an employee by the payment of available funds at any time, provided the alleged conduct giving rise to the personal damages claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(c) The Director General of the Foreign Service and Director of Personnel ("Director General") shall be the designee of the Under Secretary for Management with respect to determinations under paragraphs (a) and (b) of this section in cases which involve:

(1) Foreign courts or foreign administrative bodies and

(2) Requests of less than five thousand dollars.

(d) Absent exceptional circumstances as determined by the Under Secretary for Management or his or her designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damages claim before entry of an adverse verdict, judgment, or award.

(e) When an employee in the United States becomes aware that an action has been filed against the employee in his or her personal capacity as a result of conduct taken within the scope of his or her employment, the employee shall immediately notify the Department through the Executive Director of the Office of the Legal Adviser that such an action is pending. Employees overseas shall notify their Administrative Counselor who shall then notify the Assistant Legal Adviser for Special Functional Problems. Employees may be authorized to receive legal

representation by the Department of Justice in accordance with 28 CFR 50.15.

(f) The employee may thereafter request indemnification to satisfy a verdict, judgment, or award entered against the employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal if on appeal, to the Legal Adviser. Except as provided in paragraph (g) of this section, the Legal Adviser and the Director General shall then, in coordination with the Bureau of Finance and Management Policy, forward the request with their recommendation to the Under Secretary for Management for decision. The Legal Adviser may seek the views of the Department of Justice, as appropriate, in preparing this recommendation.

(g) Cases in which the Director General is the designee under paragraph (c) of this section may be forwarded by the Assistant Legal Adviser for Special Functional Problems, along with the views of the employee and the bureau or post as appropriate, to the Director General for decision.

(h) Personal services contractors of the Department are considered employees for purposes of the policy set forth in this part.

(i) Any payment under this part either to indemnify a Department of State employee or to settle a personal damages claim shall be contingent upon the availability of appropriated funds.

(j) In addition to the indemnification provisions contained in the regulations in this part, the Department will also follow any specific policies or regulations adopted with respect to damages awarded against Department health care personnel for malpractice claims within the scope of 22 U.S.C. 2702.

Dated: May 5, 1995.

**Richard M. Moose,**

*Under Secretary for Management.*

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## **UNITED STATES INFORMATION AGENCY**

### **22 CFR Part 502**

[Rulemaking No. 202]

### **Educational, Scientific, and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials**

**AGENCY:** United States Information Agency.

**ACTION:** Final rule.

**SUMMARY:** The Agency is adopting a final rule amending existing regulations governing the United States Information Agency's administration of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character, of 1948, by permitting the issuance of serial certifications in certain circumstances. The amendment reinstates into the regulations a provision omitted in a previous revision of the regulations, and allows for certification of time sensitive materials in serial format, thus facilitating the free flow of eligible materials.

**EFFECTIVE DATE:** June 7, 1995.

#### **FOR FURTHER INFORMATION CONTACT:**

Neila Sheahan, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 619-5030.

**SUPPLEMENTARY INFORMATION:** The United States Information Agency implements and administers the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character ("Beirut Agreement"), enacted by the Third General Session of the United Nations Educational, Cultural and Scientific Organization (UNESCO), in Beirut, Lebanon in 1948, 17 U.S.T. 1578. In order to reconcile the terms of the Beirut Agreement with recent judicial decisions and statutory requirements, the Agency published revisions to the regulations covering implementation of the Agreement, at 59 FR 18963 on April 21, 1994. Those regulations made changes in the substantive criteria by which the Agency evaluates the character of audio visual material for certification, and renumbered the regulations. The regulations, however, omitted the provision for serial certifications, a practice followed informally from 1963 and formally incorporated into Agency regulations in 1984, at 22 CFR 502.6(b)(6). The provision for serial certifications was not challenged by judicial decisions; nor was its alteration or elimination required by statute.

On April 18, 1995 the Agency published in 60 FR 19385 a proposed rule to reinstate the provision for serial certification. It allows for the certification of otherwise eligible materials that (1) are produced in series form (e.g. weekly, bi-weekly, monthly), (2) are extremely time sensitive; and therefore the normal processing of