

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions 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 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 36 handlers of South Texas onions who are subject to regulation under the order and approximately 60 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of handlers and producers of South Texas onions may be classified as small entities.

Committee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry.

Many years of marketing experience led to the development of the current shipping and packing procedures. These procedures have helped the industry address marketing problems by keeping supplies and movement of packed onions in balance with market needs, and strengthening market conditions. However, the recent heavy rains have disrupted the normal pattern of harvesting, packing and loading and all onions must now be dried in mechanical dryers prior to packing. Growers cannot harvest more onions until the dryers are emptied and dryers can not be emptied if onions are unable to be packed and shipped each day of the week.

The Committee considered not relaxing the regulation for the remainder of the season, but felt that would result in significant crop losses. The Committee also felt that a cessation in harvesting activity would result in increased unemployment among onion field workers and employees at handlers' facilities. In addition, reduced supplies would likely result in

consumers paying higher prices for these onions.

While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the relaxation in the packing and loading regulation impact both small and large handlers positively by helping them maintain markets even though onion harvesting and packing conditions have fluctuated widely this season.

There are some reporting, recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This interim final rule does not change those requirements.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

A 30-day comment period is provided to allow interested persons to respond to this interim final rule. All written comments received within the comment period regarding this action or its effect on small business entities will be considered prior to finalization of this interim final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Record rainfall in the South Texas production area necessitates emergency rulemaking and making this action effective on the date specified; (2) this rule relaxes requirements on regulated handlers; (3) handlers are aware of this action which was unanimously recommended by the Committee at an April 16, 1997, meeting; and (4) this interim final rule provides a 30-day comment period, and

all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 959.322, the introductory paragraph is revised to read as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending June 15, no handler shall handle any onions unless they comply with paragraphs (a) through (d) or (e) or (f) of this section. In addition, no handler may package or load onions on Sunday during the period March 1 through May 20, except during the period April 20, 1997, through May 20, 1997.

* * * *

Dated: April 18, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Parts 15, 15a, and 15b

[Docket No. 970416092-7092-01]

RIN 0690-XX03

Statement of Policy and Procedures Regarding Indemnification of Department of Commerce Employees

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule adds a statement of policy and procedures regarding indemnification of Department of Commerce employees. During the 1980s, largely in response to the flood of Bivens type lawsuits, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), approximately a dozen agencies issued regulations establishing procedures and policies to indemnify their employees against personal liability for actions taken within the

scope of their employment. The Justice Department's Office of Legal Counsel has issued several opinions upholding the legality of these regulations. In addition, there is a logical connection between the achievement of an agency's underlying mission and protecting the agency's employees from financial liability for actions taken within the scope of their employment. At present there is no Department of Commerce (the "Department") policy that allows for the payment of Department funds to indemnify Department employees who suffer adverse money judgments as a result of official acts, or for the settlement of personal damages claims by the payment of Department funds. This policy statement will permit such payment in appropriate cases as determined by the Secretary.

EFFECTIVE DATE: May 23, 1997.

FOR FURTHER INFORMATION CONTACT: M. Timothy Conner or Donald J. Reed, Department of Commerce, Office of the General Counsel, Room 5890, Washington, DC 20230, (202) 482-1067.

SUPPLEMENTARY INFORMATION: Unlike most state and local governments and private sector corporations, the Department does not now indemnify its employees who are sued personally and suffer an adverse judgment as a result of conduct taken within the scope of employment, nor does it settle "individual capacity" claims with Department funds. Lawsuits against federal employees in their individual capacity have proliferated since the 1971 Supreme Court decision in *Bivens*. As reported by the Department of Justice, over 12,000 claims have been filed against federal employees since 1971; nearly 5,000 actions are now pending. These suits personally attack officials at all levels of government and target all federal activities, particularly law enforcement.

The prospect of personal liability and the burden of defending a claim arising from the performance of an employee's official duties has a negative and chilling impact on the Department's law enforcement effectiveness. Uncertainty regarding what conduct may lead to a claim tends to intimidate employees, stifle creativity, and limit decisive action. As Professor Kenneth Culp Davis noted, "The public suffers whenever a government employee resolves doubt in order to protect his own pocketbook instead of resolving doubt in order to

protect the public interest * * *. Courageous action of public employees is discouraged by the threat of a lawsuit against the employee personally." K. Davis, *Constitutional Torts* at 25, 26 (1984).

The Department believes that lawsuits against Federal employees in their personal capacity are an impediment to the Department's effective functioning. A Departmental policy to permit the indemnification of employees would facilitate the removal of this impediment and accord Department employees the same protection now enjoyed by most state and local government employees as well as most corporate employees. This policy would permit, but not require, the Department to indemnify an employee who suffers 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 Department as determined by the Secretary. The policy also allows the Department, in rare cases, to settle an "individual capacity" claim with Department funds prior to entry of judgment. However, absent exceptional circumstances, the Department will not agree either to indemnify or settle before entry of an adverse judgment. This policy is thus designed to discourage the filing of lawsuits against employees in their individual capacity solely in order to pressure the government into settlement.

In addition to adding the policy and procedures for indemnification of employees, these regulations reorganize 15 CFR parts 15, 15a, and 15b into one part 15 in order to streamline regulations regarding legal proceedings and Department of Commerce employees.

These regulations are published in final form without the opportunity for public notice and comment because they constitute a general statement of policy regarding Department of Commerce management and personnel; consequently, publication for public notice and comment is not required (5 U.S.C. 533(a)(2)).

Since a notice of proposed rulemaking is not required by 5 U.S.C. 533, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

These amendments do not impose additional reporting or recordkeeping requirements on the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 15 CFR Part 15

Administrative practice and procedure, Alimony, Child support, Courts, Government employees, Indemnity payments, NOAA Corps allotments, Wages.

For the reasons set forth in the preamble, the Department of Commerce amends 15 CFR parts 15, 15a, and 15b as follows:

PART 15—LEGAL PROCEEDINGS

1. The authority for part 15 is revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515 and 1518; Reorganization Plan No. 5 of 1950; 3 CFR, 1949-1953 Comp., p. 1004; 44 U.S.C. 3101; subpart C is issued under 37 U.S.C. 101, 706; 15 U.S.C. 1673; 42 U.S.C. 665.

2. The heading of part 15 is revised to read as set forth above.

PART 15—[REDESIGNATED AS SUBPART A OF PART 15 (§§ 15.1-15.3)]

3. Part 15 is redesignated as subpart A of part 15 consisting of §§ 15.1, 15.2, and 15.3.

PART 15A—[REDESIGNATED AS SUBPART B OF PART 15 (§§ 15.11-15.18)]

4. Part 15a is redesignated as subpart B of part 15 consisting of §§ 15.11, 15.12, 15.13, 15.14, 15.15, 15.16, 15.17 and 15.18.

PART 15B—[REDESIGNATED AS SUBPART C OF PART 15 (§§ 15.21-15.25)]

5. Part 15b is redesignated as subpart C of part 15 consisting of §§ 15.21, 15.22, 15.23, 15.24, and 15.25.

6. In the regulatory text of newly designated subparts A, B, and C, all references to "part" are redesignated to read "subpart".

7. In the regulatory text of newly designated subparts A, B, and C, references are amended as indicated in the table below:

Section	Removed	Added
15.1(c)	Part 15a	Subpart B.
15.16, introductory text	15a.1 through 15a.6	15.11 through 15.16.
15.17 (twice)	15a.1 through 15a.8	15.11 through 15.18.
15.24(b)	15b	15.25.

8. A new subpart D is added to part 15 to read as follows:

Subpart D—Statement of Policy and Procedures Regarding Indemnification of Department of Commerce Employees

Sec.

15.31 Policy.

15.32 Procedures for the handling of lawsuits against Department employees arising within the scope of their office or employment.

Subpart D—Statement of Policy and Procedures Regarding Indemnification of Department of Commerce Employees

§ 15.31 Policy.

(a) The Department of Commerce may indemnify a present or former Department employee who is personally named as a defendant in any civil suit in state or federal court, or other legal proceeding seeking damages against a present or former Department employee personally, 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 his/her employment and that such indemnification is in the interest of the Department as determined by the Secretary or his/her designee.

(b) The Department may settle or compromise a personal damage claim against a present or former employee by the payment of available funds at any time provided the alleged conduct giving rise to the personal property claim was taken within the employee's scope of employment and such settlement is in the interest of the Department as determined by the Secretary or his/her designee.

(c) Absent exceptional circumstances, as determined by the Secretary or his/her designee, the Department will not consider a request either to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment or award.

(d) Any payment under this section either to indemnify a present or former Department employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the Department of Commerce.

§ 15.32 Procedures for the handling of lawsuits against Department employees arising within the scope of their office or employment.

The following procedures shall be followed in the event that a civil action or proceeding is brought, in any court, against a present or former employee of the Department (or against his/her estate) for personal injury, loss of property or death, resulting from the Department employee's activities while acting within the scope of his/her office or employment:

(a) After being served with process or pleadings in such an action or proceeding, the employee (or the executor(rix) or administrator(rix)) of the estate shall within five (5) calendar days of receipt, deliver all such process and pleadings or an attested true copy thereof, together with a fully detailed report of the circumstances of the incident giving rise to the court action or proceeding to the General Counsel. Where appropriate, the General Counsel, or his/her designee, may request that the Department of Justice provide legal representation for the present or former Department employee.

(b)(1) Only if a present or former employee of the Department has satisfied the requirements of paragraph (a) of this section in a timely fashion, may the employee subsequently request indemnification to satisfy a verdict, judgment, or award entered against that employee.

(2) No request for indemnification will be considered unless the employee has submitted a written request, with appropriate documentation, including copies of the verdict, judgment, appeal bond, award, or settlement proposal through the employee's supervisory chain to the head of the employee's component. The written request will include an explanation by the employee of how the employee was working within the scope of employment and whether the employee has insurance or any other source of indemnification.

(3) The head of the component or his/her designee will forward the employee's request with a recommendation to the General Counsel for review. The request for indemnification shall include a detailed analysis of the basis for the recommendation. The head of the component will also certify to the

General Counsel that the component has funds available to pay the indemnification.

(c) The General Counsel or his/her designee will review the circumstances of the incident giving rise to the action or proceeding, and all data bearing upon the question of whether the employee was acting within the scope of his/her employment. Where appropriate, the agency shall seek the views of the Department of Justice and/or the U.S. Attorney for the district embracing the place where the action or proceeding is brought.

(d) The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Secretary or his/her designee for decision.

Alden F. Abbott,

Assistant General Counsel for Finance and Litigation.

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations: Reporting on Foreign Affiliates' Oil-Related Transactions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: The Treasury Department is amending the reporting requirement set forth in the Iranian Transactions Regulations on foreign affiliates' oil-related transactions. The amended rule requires a U.S. person to file a transaction report as to each foreign affiliate that engaged in reportable transactions of \$1,000,000 or more during the calendar quarter. Reports are to be filed within 60 days of the end of the quarter.

EFFECTIVE DATE: April 18, 1997.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Chief, Blocked Assets Division (tel.: 202/622-2440), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets