Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary of Agriculture

Waiver of Penalties for Small Business and Reducing the Frequency of Reports

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of the Department of Agriculture's policy for the waiver of penalties for small businesses and the reduction of the frequency of reports required to be made by the public. In April 1995, the President directed heads of executive branch agencies to use their discretion to waive, in appropriate circumstances, the imposition of all or a portion of penalties on small businesses and, where feasible and authorized by law, to cut by one-half the frequency with which regularly scheduled reports are required, by rule or policy, to be provided to the United States Government. The Secretary of Agriculture issued Secretary's Memorandum 3031–1, effective October 10, 1995, implementing the President's directive.

FOR FURTHER INFORMATION CONTACT: William Jenson, Senior Counsel, Regulatory Division, Office of the General Counsel, USDA, room 2402, South Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250; (202) 720–2453.

SUPPLEMENTARY INFORMATION: On April 21, 1995, the President issued a memorandum to heads of executive branch agencies directing that each: (1) use his or her discretion to waive penalties imposed on small businesses where appropriate; (2) where feasible and authorized by law, cut by one-half the frequency with which regularly scheduled reports are required, by rule or policy, to be provided to the United States Government; and (3) submit a plan to the Director of the Office of Management and Budget describing the actions the agency will take to implement the President's April 21, 1995, memorandum. The President's memorandum was published in the Federal Register on April 26, 1995, at 60 FR 20621–20622.

The Department of Agriculture's plan to implement the President's April 21, 1995, memorandum was approved by the Director of the Office of Management and Budget, and the Secretary of Agriculture's memorandum implementing the President's directive became effective on October 10, 1995.

This notice serves to notify small businesses and the public of the Department of Agriculture's policy regarding the waiver of penalties for small businesses, and the Department of Agriculture's policy regarding reductions in the frequency with which regularly scheduled reports are required, by rule or policy, to be provided to the Department of Agriculture. These Department of Agriculture policies are set forth in Secretary's Memorandum 3031–1 which reads as follows:

[Secretary's Memorandum 3031–1]

Waiver of Penalties for Small Business and Cutting Frequency of Reports

1. Background

The Secretary administers a number of statutes that authorize the Secretary to impose penalties for violations of those statutes, of regulations issued under those statutes, and of contracts and agreements executed under those statutes. The Secretary administers a number of programs under which the public is required, by regulation or policy, to provide USDA with regularly scheduled reports. The President issued a memorandum on April 21, 1995, to the heads of executive branch agencies directing that each:

a. use his or her discretion to waive the imposition of all or a portion of penalties on small businesses;

b. cut by one-half the frequency with which regularly scheduled reports are required, by rule or policy, to be provided to the United States Government; and

c. submit a plan to the Director of the Office of Management and Budget describing the actions the agency will take to implement the penalty waiver policy and the reporting frequency policy described in the President's April 21, 1995, memorandum.

2. Purpose

a. This Memorandum implements the President's policy to waive penalties for small businesses and to reduce the frequency of reports required to be made by the public.

b. Neither the President's policy to waive penalties for small businesses and to reduce the frequency of reports required to be made by the public nor this Memorandum applies to:

(1) matters related to law enforcement, national security, or foreign affairs;

(2) the importation of exportation of prohibited or restricted items;

(3) United States Government taxes, duties, fees, revenues, or receipts; or

(4) USDA agencies whose principal purpose is the collection, analysis, and dissemination of statistical information.

3. Definitions

For the purposes of this Memorandum, the following terms shall have the meanings set forth in this paragraph.

a. *Administering agency.* The USDA agency that administers the statute, regulation, contract, or agreement under which penalties may be imposed.

b. *Corrective action.* Action taken by a small business to correct a violation or to achieve compliance.

c. *Covered penalty.* Any penalty that may be imposed for a violation of a statute, regulation, contract, or agreement for which:

(1) the violator has made a good faith effort to comply with the statute, regulation, contract, or agreement that has been violated;

(2) the violation does not constitute a violation of criminal law;

(3) the violation did not result in a significant threat to health, safety, or the environment;

(4) the violation can be corrected or the violator can achieve compliance;

(5) an adjudicatory action has not been instituted; and

(6) the Secretary is permitted by law or has discretion under applicable statutes, regulations, contracts, or agreements to waive all or a portion of the penalty.

d. *Good faith effort to comply with the statute, regulation, contract, or agreement that has been violated.* Conduct that results in a violation of a statute, regulation, contract, or agreement, but circumstances surrounding the violation indicate that (1) the violator did not know that the conduct constituted a violation and the violator did not intend to commit the violation; (2) the violator made every reasonable effort to comply with the statute, regulation, contract, or agreement; or (3) the violator knew that the conduct constituted a violation, but due to circumstances beyond the violator's control it was impossible for the violator to comply, and the violator brought the violation to the attention of appropriate USDA officials in an expeditious manner. (The term *good faith effort to comply with the statute, regulation, contract, or agreement* *that has been violated* does not include any circumstance in which: the violation was malicious; the violator had previously been found to have violated the same statute, regulation, contract, or agreement; or the violator had previously been informed that the conduct that resulted in the violation is prohibited by statute, regulation, contract, or agreement.)

e. *Penalty.* Any sanction that may be imposed directly by the Secretary. (The term *penalty* does not include: liquidated damages; any restitution for damages suffered by USDA; any action that either permanently or temporarily excludes a small business from entering into a transaction with USDA; or any sanction that may be imposed by a USDA grantee or subgrantee even if the sanction may be imposed as a result of conditions required by USDA for the grant.)

f. *Penalty Modification Coordinator.* The individual appointed by a USDA agency in accordance with paragraph 5 of this Memorandum.

g. *Secretary.* The Secretary of the United States Department of Agriculture or any individual to whom the Secretary delegates authority.

h. *Significant threat to health, safety, or the environment.* Any conduct that is likely to result in:

(1) death, injury, illness, or spread of diseases or pests to any human, animal, or plant; or

(2) material harm to the environment.

i. *Small business.* Any sole proprietorship, joint venture, partnership, corporation, association, or other legal entity that:

(1) employed 500 or fewer individuals at the time of the alleged violation; or

(2) in the tax year immediately preceding the alleged violation, had gross receipts of $1,000,000 or less.

j. *USDA.* The United States Department of Agriculture.

4. Waiver of Penalties

a. If a penalty may be imposed on the small business by the Secretary, the administering agency shall determine whether the penalty is a covered penalty. If the administering agency determines the penalty to be a covered penalty, the administering agency shall:

(1) provide a copy of this Memorandum to the small business on which the penalty may be imposed; and

(2) notify the small business that the imposition of all or a portion of a penalty can be waived as agreed by the small business and the agency, if corrective action can be achieved within the time to be established in the sole discretion of the administering agency. The penalty shall be waived, in whole or in part, if the administering agency and the small business agree in writing as to the waiver of the penalty, the administering agency establishes the time within which correction action is to be taken, and the small business takes corrective action within the time established by the administering agency.

b. If the small business takes corrective action, but fails to do so within the time established in accordance with paragraph 4a(2) of this Memorandum by the administering agency, the administering agency may reduce the amount of any monetary penalty that may be imposed for the violation up to the amount spent by the small business for corrective action. When determining whether to reduce a monetary penalty in accordance with this subparagraph, the administering agency shall take into account the time in which the small business took corrective action and any difficulties the small business encountered when doing so.

c. Any administering agency that waives a penalty in accordance with paragraph 4a or 4b of this Memorandum shall issue a written statement to the small business stating that corrective action has been taken, that the imposition of all or a portion of the penalty has been waived, the manner in which the penalty has been waived, and the amount or type of any remaining penalty that may be imposed.

d. The use of appropriate alternative dispute resolution techniques to assist in the determination whether a penalty will be waived as authorized by this Memorandum is encouraged.

e. Each Under or Assistant Secretary shall submit a quarterly report, starting January 1, 1996, to the Secretary of Agriculture describing actions taken pursuant to this Memorandum. Each quarterly report must include each penalty that has been waived during the quarter, the manner in which each penalty has been waived, the corrective action taken by the small business, and the amount or type of any remaining penalty.

5. Penalty Modification Coordinator

Each administering agency that administers any program under which the Secretary is permitted by law or has discretion to waive the imposition of a penalty shall appoint a Penalty Modification Coordinator who shall be responsible for the implementation of paragraphs 4 and 6 of this Memorandum in the administering agency.

6. Notification

a. Each Penalty Modification Coordinator shall provide to each employee of the administering agency who has authority to assess penalties or to recommend the assessment of penalties:

(1) a copy of this Memorandum; and

(2) the name, address, and telephone number of the Penalty Modification Coordinator, who shall be available to answer questions concerning the implementation of this Memorandum posed by agency employees.

b. Small businesses shall be notified of this Memorandum by publication of this Memorandum in the Federal Register.

7. Reporting Frequency

a. Except as provided in paragraph 7c of this Memorandum, each agency shall reduce by at least one-half the frequency with which regularly scheduled reports required, by regulation or policy in effect on April 21, 1995, must be provided to USDA.

b. Policy changes necessary to comply with paragraph 7a of this Memorandum shall be implemented no later than November 1, 1995. Regulatory changes necessary to comply with paragraph 7a of this Memorandum shall be effective no later than January 1, 1996.

c. The frequency with which regularly scheduled reports shall be provided to USDA shall not be reduced pursuant to paragraph 7a of this Memorandum if:

(1) the frequency with which the report is provided to USDA is required by statute;

(2) the report is required to be provided to USDA as a condition of continued employment with USDA, execution of a contract with USDA, or receipt of a loan, grant, guarantee, or benefit from USDA; or

(3) the Secretary of Agriculture determines that the reduction of the frequency with which the regularly scheduled report is provided to USDA—is not legally permissible; would not adequately protect health, safety, or the environment; would be inconsistent with achieving regulatory flexibility or reducing regulatory burdens; or would impede the effective administration of a USDA program.

8. Effective Date

This Memorandum shall be effective on October 10, 1995.

9. Effect on Other Agency Penalty Waiver Policies

To the extent that any administering agency policy regarding the waiver of covered penalties is inconsistent with this Memorandum, the policy shall be revoked or modified to conform to this Memorandum no later than November 1, 1995. To the extent that any administering agency regulations regarding the waiver of covered penalties is inconsistent with this Memorandum, the regulations shall be revoked or modified to conform to this Memorandum no later than January 1, 1996. This Memorandum does not affect any administering agency policy to waive penalties that is not inconsistent with this Memorandum.

10. Termination or Modification

This Memorandum may be terminated or modified by the Secretary of Agriculture at any time.

11. Judicial Review

This Memorandum is intended only to improve the internal management of USDA and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, USDA, the officers or employees of the United States or USDA, or any other person. Neither this Memorandum nor the waiver of any penalty in accordance with this Memorandum shall affect the date on which the imposition of a penalty shall be considered to be final agency action for the purposes of judicial review.

Done in Washington, D.C., this 22nd day of January, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–1415 Filed 1–25–96; 8:45 am]

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