

rulemaking to coincide with the December 14, 2009 TTB comment deadline was published in the **Federal Register** (74 FR 57125) on November 4, 2009. In response to a request from the public to provide additional time to prepare comments on the proposed rule, CBP is extending the comment period for an additional 30 days to January 12, 2010.

**DATES:** Comments on the proposed rule must be received on or before January 12, 2010.

**ADDRESSES:** You may submit comments, identified by *USCBP docket number*, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2009-0021.

- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229-1179.

*Instructions:* All submissions received must include the agency name and USCBP docket number for this proposed rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** William Rosoff, Entry Process and Duty Refunds, Regulations and Rulings, Office of International Trade, (202) 325-0047.

**SUPPLEMENTARY INFORMATION:**

**Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border

Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

**Background**

Customs and Border Protection (CBP) published a document in the **Federal Register** (74 FR 52928) on October 15, 2009 proposing to amend title 19 of the Code of Federal Regulations to preclude the filing of substitution drawback claims for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawback of excise tax under any provision of the Internal Revenue Code. The document solicited public comment on the proposed amendments, and requested that submitted comments be received by CBP on or before November 16, 2009.

A related proposed rulemaking prepared by the Alcohol and Tobacco Tax and Trade Bureau (TTB) within the Department of the Treasury was published in the same edition of the **Federal Register** (74 FR 52937, October 15, 2009). Comments on TTB's proposed rule are due on or before December 14, 2009.

A subsequent notice extending the time within which the public may submit comments on CBP's proposed rulemaking to coincide with the December 14, 2009 TTB comment deadline was published in the **Federal Register** (74 FR 57125) on November 4, 2009.

*Second Extension of Comment Period*

CBP received a written submission from the trade, dated November 2, 2009, requesting that the comment period be extended for an additional 30 days to provide adequate time to prepare comments on the proposed rule. Upon review, a decision has been made to grant the request. Accordingly, the comment period is extended to January 12, 2010 and comments must be received by CBP on or before that date.

Dated: November 20, 2009.

**Sandra L. Bell,**

*Executive Director, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection.*

Approved: November 20, 2009.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. E9-28285 Filed 11-24-09; 8:45 am]

**BILLING CODE 9111-14-P**

**DEPARTMENT OF STATE**

**22 CFR Part 126**

[Public Notice: 6813]

**RIN 1400-AC52**

**Amendment to the International Arms Traffic in Arms Regulations: U.S. Government Transfer Programs and Foreign-Owned Military Aircraft and Naval Vessels**

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of State is proposing to amend Section 126.6 of the International Traffic in Arms Regulations (ITAR) pertaining to U.S. Government transfer programs and foreign-owned military aircraft and naval vessels. Section 126.6 is being amended to clarify the particular circumstances when a license is not required by the Directorate of Defense Trade Controls.

**DATES:** The Department of State will accept comments on this proposed rule until January 25, 2010.

**ADDRESSES:** Interested parties may submit comments within 60 days of the date of the publication by any of the following methods:

- *E-mail:*

[DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov) with an appropriate subject line.

- *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, 126.6, SA-1, 12th Floor, Washington, DC 20522-0112.

Persons with access to the Internet may also view this notice by going to the U.S. Government regulations.gov Web site at <http://regulations.gov/index.cfm>.

**FOR FURTHER INFORMATION CONTACT:**

Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663-2792 or Fax (202) 261-8199; E-mail [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov). ATTN: Regulatory Change, 126.6.

**SUPPLEMENTARY INFORMATION:** Section 126.6 of the ITAR specifies when a license from the Directorate of Defense Trade Controls is not required for certain specified U.S. Government transfer programs and exports involving foreign-owned military aircraft and naval vessels. The title of this particular section has been changed from “Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program” to “U.S. Government transfer programs and foreign-owned military aircraft and naval vessels” to more accurately describe its coverage. Section 126.6 is being amended to clarify the particular circumstances when a license is not required by the Directorate of Defense Trade Controls. Current regulatory language was implemented when the U.S. Government executed these programs with mostly U.S. Government personnel. Over the years the U.S. Government, especially the Department of Defense, has expanded operations and migrated to utilization of the Defense Transportation System as well as commercial carriers to, in some instances, fully replace government transportation systems and personnel. As a result, U.S. Customs and Border Protection was unclear as to which programs were U.S. Government programs and, therefore, which items were qualified to be exported from the United States without an associated export license. The proposed changes address this issue. Also, the proposed amendment addresses in more detail the export requirements involving the Foreign Military Sales program and extends the exemption to exports pursuant to section 1206 of the National Defense Authorization Act for Fiscal Year 2006, as amended and extended, or section 1206 of the National Defense Authorization Act for Fiscal Year 2008. It further delineates requirements, authorized periods for license exemptions, documentary requirements, and the applicable terms and conditions relating to the U.S. Government’s transfer and/or loan of defense articles to foreign governments or international organizations.

#### Regulatory Analysis and Notices

##### *Administrative Procedure Act and Executive Order 12866*

Applicability of 5 U.S.C. 553 and Executive Order 12866 is under discussion with the Office of Management and Budget.

##### *Regulatory Flexibility Act*

The applicability of the Regulatory Flexibility Act is contingent on the

applicability of 5 U.S.C. 553, which will be determined at a later time.

##### *Unfunded Mandates Act of 1995*

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### *Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

##### *Executive Orders 12372 and 13132*

This proposed amendment will not have substantial effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

##### *Paperwork Reduction Act*

This proposed rule would not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

#### List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is proposed to be amended as follows:

#### PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42 and 71, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Public Law 108–375.

2. Section 126.6 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (b), (c), and (d) to read as follows:

#### **§ 126.6 U.S. Government transfer programs and foreign-owned military aircraft and naval vessels.**

(a) \* \* \*

(1) The defense article to be exported was sold, granted, leased, or loaned by the Department of Defense to the government of a foreign country or to an international organization pursuant to the Arms Export Control Act, as amended, (AECA) or the Foreign Assistance Act of 1961, as amended;

(2) The defense article is exported to representatives of the government of the foreign country or international organization in the United States;

(3) The defense article is to be exported from the United States:

(i) On a military aircraft or naval vessel of the government of the foreign country or international organization. The shippers export declaration (SED) must be entered in the Automated Export System (AES) by such government or international organization prior to export;

(ii) By the Department of Defense via the Department of Defense Transportation System (DTS) in accordance with the vetting procedures and the requirements in DoD 5105.38–M, “Security Assistance Management Manual” (SAMM), and DoD Regulations 4500.9E and 4500.9R, “Defense Transportation Regulations” (DTR). The SED must be entered in the AES by the cognizant or responsible military service or implementing agency; or

(iii) By a Department of Defense contracted carrier via the DTS in accordance with the vetting procedures and the requirements in DoD 5105.38–M, “Security Assistance Management Manual” (SAMM), and DoD Regulations 4500.9E and 4500.9R, “Defense Transportation Regulations” (DTR). The SED must be entered in the AES by the cognizant or responsible military service or implementing agency; and

(4) In the event the defense article to be exported is classified, the export is made by a person having the appropriate USG security clearance, in compliance with the Department of Defense National Industrial Security Program Operating Manual (DoD NISPOM), and pursuant to an approved transportation plan.

(b) *Foreign military aircraft and naval vessels.* A license is not required for the entry into and subsequent exit from the United States of military aircraft or naval vessels of any foreign state if no overhaul, repair, or modification of the aircraft or naval vessel is to be

performed. However, Department of State approval for overflight (pursuant to 49 U.S.C. 40103) and naval visits must be obtained from the Department of State, Bureau of Political-Military Affairs, Office of International Security Operations.

(c) *Foreign Military Sales program.* A license from the Directorate of Defense Trade Controls is not required if the defense article or defense service is to be exported to a foreign country or international organization under the Foreign Military Sales (FMS) program of the AECA pursuant to a jointly-signed Letter of Offer and Acceptance (LOA) authorizing such export where such export meets the criteria stated below:

(1) Exports of the defense article or defense service using this exemption may take place only during the period in which the FMS Program LOA and implementing USG FMS contracts and subcontracts are in effect and serve as authorization for the exports hereunder in lieu of a license. The Department of Defense shall ensure that defense articles and defense services exported are limited to those authorized under the valid LOA, maintain the dollar value balance shipped against the LOA, and shall promptly notify U.S. Customs and Border Protection (CBP) of any amendments or modifications to the LOA, including the remaining balance when the LOA is completed, closed, or is no longer valid as an authorization;

(2) The defense article or defense service to be exported is specifically identified in an executed LOA, in furtherance of the FMS program, signed by an authorized representative of the Department of Defense and an authorized representative of the foreign government;

(3) The total value of the defense articles and defense services exported must not exceed that value authorized by the relevant LOA and any relevant contract and subcontract;

(4) The export is not to a country proscribed in § 126.1 of this subchapter;

(5) The U.S. person responsible for the transfer or the Department of Defense (in the case of DTS shipments) maintains records of all exports in accordance with Part 122 of this subchapter;

(6) For exports of defense articles:

(i) The shipment is made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is so designated in writing by the foreign government to, and is registered with, the Directorate of Defense Trade Controls pursuant to Part 122 of this subchapter;

(ii) Prior to shipment, the Department of Defense shall lodge the LOA, and any amendments or modifications thereto, with the Port Director of U.S. Customs and Border Protection of the primary port;

(iii) The relevant foreign diplomatic mission of the purchasing country, or its authorized freight forwarder, prepares and provides to the Port Director of U.S. Customs and Border Protection a properly executed DSP-94 that has been countersigned by an authorized representative of the Department of Defense verifying that the export is in accordance with the LOA. The exporter must also provide any other documents required by the Port Director of U.S. Customs and Border Protection in carrying out its responsibilities. The AES SED or, if authorized, the outbound manifest must be annotated as follows: "This shipment is being exported under the authority of Department of State Form DSP-94 pursuant to a current and valid FMS Case [case identification], implemented [implementation date]. 22 CFR 126.6(c) applicable. The U.S. Government point of contact is \_\_\_\_\_, telephone number \_\_\_\_\_,"; and

(iv) In the event the defense article to be exported is classified, the export must be made by a person having the appropriate USG security clearance and must be made in compliance with the Department of Defense National Industrial Security Program Operating Manual (DoD NISPOM) and pursuant to an approved transportation plan; and

(7) For exports of defense services:

(i) The U.S. exporter must have entered into a contract with the Department of Defense that:

(A) Specifically defines the scope of the defense service to be exported;

(B) Cites the FMS case identifier;

(C) Identifies the foreign recipients of the defense service;

(D) Identifies any other U.S. or foreign parties that may be involved and their roles/responsibilities to the extent known when the contract is executed; and

(E) Specifies the period during which the defense service may be performed;

(ii) The U.S. person that is a party to a contract with the Department of Defense for the provision of defense services pursuant to an FMS case must maintain a valid registration with the Directorate of Defense Trade Controls for the entire time that the defense service is being provided. In any instance when that U.S. person employs a U.S. subcontractor, that subcontractor may only provide defense services pursuant to this subsection when registered with Directorate of Defense Trade Controls, and when such

subcontract meets the requirements of paragraphs (c)(7)(i)(A) through (E) of this section;

(iii) In instances when the defense service involves the transfer of classified technical data, the U.S. person transferring the defense service must have the appropriate USG security clearance and a transportation plan, if appropriate, in compliance with the Department of Defense National Industrial Security Program Operating Manual (DoD NISPOM);

(iv) Where defense articles are exported along with defense services, the exporter must comply with paragraph (c)(6) of this section; and

(v) The U.S. exporter reports its initial export, citing this section of the International Traffic in Arms Regulations. The U.S. exporter must maintain records of the export to include the FMS case identifier, the contract and subcontract number, the foreign country, and the duration of the service being provided. These records must be kept in accordance with § 122.5 of this subchapter.

(d) *Other USG Programs.* A license from the Directorate of Defense Trade Controls is not required if:

(1) Defense articles to be exported were sold, granted, leased or loaned by the Department of Defense to a foreign country or international organization pursuant to section 1206 of the National Defense Authorization Act for Fiscal Year 2006, as amended and extended, or section 1206 of the National Defense Authorization Act for Fiscal Year 2008;

(2) The defense article is to be exported from the United States:

(i) By the Department of Defense via the Department of Defense Transportation System (DTS) in accordance with the vetting procedures and the requirements in DoD 5105.38-M, "Security Assistance Management Manual" (SAMM), and DoD Regulations 4500.9E and 4500.9R, "Defense Transportation Regulations" (DTR). The SED must be entered in the AES by the cognizant or responsible military service or implementing agency; or

(ii) By a Department of Defense contracted carrier via the DTS in accordance with the vetting procedures and the requirements in DoD 5105.38-M, "Security Assistance Management Manual" (SAMM), and DoD Regulations 4500.9E and 4500.9R, "Defense Transportation Regulations" (DTR). The SED must be entered in the AES by the cognizant or responsible military service or implementing agency; and

(3) In the event the defense article to be exported is classified, the export is made by a person having the appropriate USG security clearance, in

compliance with the Department of Defense National Industrial Security Program Operating Manual (DoD NISPOM) and pursuant to an approved transportation plan.

Dated: November 3, 2009.

**Ellen O. Tauscher,**

*Under Secretary, Arms Control and International Security, Department of State.*  
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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-111833-99]

RIN 1545-AX46

### Regulations Under I.R.C. Section 7430 Relating to Awards of Administrative Costs and Attorneys Fees

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to awards of administrative costs and attorneys fees under section 7430 to conform to the amendments made in the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998. The regulations affect taxpayers seeking attorneys fees and costs. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by February 8, 2010. Outlines of topics to be discussed at the public hearing scheduled for 10 a.m. on March 10, 2010 must be received by February 10, 2010.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-111833-99), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-111833-99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-111833-99). The public hearing will be held in the Internal Revenue Building, Room 2615, 1111 Constitution Avenue, NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the hearing, submission of written comments, and to be placed on the building access list to attend the hearing, contact Regina Johnson, (202) 622-7180; concerning the proposed regulations, contact Ronald J. Goldstein (202) 622-4910 (not toll-free numbers).

#### Background and Explanation of Provisions

The proposed amendments to the Treasury Regulations incorporate the 1997 and 1998 amendments to section 7430 of the Internal Revenue Code relating to awards of attorneys fees. These amendments were enacted as part of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788, and the IRS Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685.

The Taxpayer Relief Act of 1997 (TRA) contained several amendments to section 7430 that are addressed in the proposed amendments to the regulations. First, the TRA provided that a taxpayer has ninety days after the date the IRS mails to the taxpayer a final decision determining tax, interest or penalty, to file an application with the IRS to recover administrative costs. Second, a taxpayer has ninety days after the date the IRS mails to the taxpayer, by certified or registered mail, a final adverse decision regarding an award of administrative costs, to file a petition with the Tax Court. Third, the TRA clarified the application of the net worth requirements by providing that individuals filing joint returns should be treated as separate taxpayers for purposes of determining net worth. The TRA added trusts to the list of taxpayers subject to the net worth requirements and also specified the date on which the net worth determination should be made.

The TRA also added section 7436 to the Code, which gives the Tax Court jurisdiction in certain employment tax cases. Under section 7436, if the IRS determines in connection with an audit that (1) one or more individuals performing services for the taxpayer are employees of the taxpayer or (2) the taxpayer is not entitled to relief from employment taxes under section 530 of the Revenue Act of 1978 with respect to the individual(s), and the IRS sends a Notice of Determination of Worker Classification (NDWC) to the taxpayer by certified or registered mail, the taxpayer may petition the Tax Court to determine (1) whether the IRS's determination, as set forth in the NDWC, is correct and (2) the proper amount of employment tax under the determination. Various restrictions on

assessment and collection in section 6213 apply to a section 7436 proceeding in the same manner as if the NDWC were a notice of deficiency. Section 7436(d)(2) provides that section 7430 applies to proceedings brought under section 7436.

The proposed amendments reflect the changes outlined in this preamble. Additional clarifying changes address the calculation of net worth. First, the regulation specifies that net worth will be calculated using the fair market value of assets to provide a more accurate assessment of a taxpayer's actual and current net worth as of the administrative proceeding date. Second, the regulation specifies which net worth and size limitations apply when a taxpayer is an owner of an unincorporated business. Third, the regulation has been amended to clarify the net worth requirement in cases involving partnerships subject to the unified audit and litigation procedures of sections 6221 through 6234 of the Code (the TEFRA partnership procedures).

The IRS Restructuring and Reform Act of 1998 (RRA) also contained several amendments affecting section 7430. First, the RRA increased the hourly rate limitation from \$110 per hour to \$125 per hour. Second, two special factors were added that may be considered to increase an attorney's hourly rate: Difficulty of the issues presented and local availability of tax experts. Third, the RRA added a provision that requires a court to consider whether the IRS has lost cases with substantially similar issues in other circuit courts of appeal in deciding whether the IRS's position was substantially justified. Fourth, the RRA created an exception to the requirement that to recover attorneys fees, the taxpayer must have paid or incurred the fees. The exception provides that if an individual who is authorized to practice before the Tax Court or the IRS is representing the taxpayer on a *pro bono* basis, then the taxpayer may petition for an award of reasonable attorneys fees in excess of the amounts that the taxpayer paid or incurred, as long as the fee award is ultimately paid to the individual or the individual's employer. Fifth, the period for recovery of reasonable administrative costs was extended to include costs incurred after the date on which the first letter of proposed deficiency, commonly known as a 30-day letter, is mailed to the taxpayer. The regulations clarify, however, that a taxpayer may be eligible to recover reasonable administrative costs from the date of the 30-day letter only if at least one issue (other than recovery of