but to hold down the fort, conduct routine law enforcement, and provide for an orderly transition to the Trump Administration. I will vote against all new rules not required by statute, and any enforcement action that advances an unprecedented theory of liability until that transition is complete.

[FR Doc. 2024–28399 Filed 12–9–24; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice: 12446]

RIN 1400–AF82

Visas: Special Immigrant Visas—U.S. Government Employee Special Immigrant Visas for Service Abroad

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule makes updates to reflect a statutory change to the class of individuals who may qualify for Special Immigrant Visas (SIVs).

DATES: This final rule is effective December 10, 2024.

FOR FURTHER INFORMATION CONTACT: Jami Thompson, Senior Regulatory Coordinator, U.S. Department of State, Bureau of Consular Affairs, Visa Services, 600 19th Street NW, Washington, DC 20522, (202) 485–7586, *VisaRegs@state.gov.*

SUPPLEMENTARY INFORMATION:

I. Special Immigrant Visas for Certain Employees or Former Employees of the United States Abroad, and for the Surviving Spouses or Children of Certain Deceased Employees of the U.S. Government Abroad

A. Legal Authority

Section 203(b)(4) of the Immigration and Nationality Act (INA), as amended 8 U.S.C. 1153(b)(4), generally provides that visas may be issued to qualified special immigrants described in INA section 101(a)(27). Among the individuals considered ''special immigrants'' as defined in this provision, INA section 101(a)(27)(D), 8 U.S.C. 1101(a)(27)(D), defines ''special immigrant'' to include employees, or honorably retired former employees, of the U.S. Government abroad, or of the American Institute in Taiwan, who have performed faithful service for a total of fifteen years or more, in addition to their accompanying spouse and children, and who have been recommended and approved for such status in accordance with enumerated criteria.

Section 403(a) of the Emergency Security Supplemental Appropriations Act, 2021 (''ESSAA''), Public Law 117–31, 135 Stat. 309, 318, amended the definition of a special immigrant at INA section 101(a)(27)(D) to include a new subclause (ii). The new subclause includes in the definition of ''special immigrant'' the surviving spouse or child of an employee of the United States Government abroad: *Provided,* [t]hat the employee performed faithful service for a total of not less than 15 years or was killed in the line of duty.'' Under this provision, the qualifying surviving spouse or child of a U.S. Government employee is a principal applicant for special immigrant status, and consequently, their current spouse and minor child(ren) are entitled to SIVs as derivatives under INA section 203(d), 8 U.S.C. 1153(d), if accompanying or following to join the qualifying surviving spouse or parent. Pursuant to section 403(d) of the ESSAA, these changes are effective June 30, 2021, and have retroactive effect.

In addition to the qualifications for this group of ''special immigrants,'' INA section 204(a)(1)(G)(ii) governs the process through which an individual claiming status as a special immigrant under INA section 101(a)(27)(D) must file a petition with the Department of State, requiring that they first be recommended and approved for such status.

B. Processing for Special Immigrants Under INA Section 101(a)(27)(D)

Under INA sections 204(a)(1)(G)(ii) and 101(a)(27)(D)(i), acquisition of special immigrant status under INA section 101(a)(27)(D) requires multiple sequential steps. First, the principal officer of the U.S. embassy or consulate with jurisdiction over where the individual was employed must have recommended the granting of special immigrant status in exceptional circumstances, and the Secretary of State or appropriate designee must have approved the recommendation and found that it is in the national interest to grant such status. Second, under INA section 204(a)(1)(G)(ii), only after the approval of the recommendation, the applicant may submit a Form DS–1884, Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, or the Surviving Spouse or Child of an Employee of the U.S. Government Abroad, to a consular officer at a foreign service post. Under Department regulations at 22 CFR 42.34(b)(2), the date the applicant's properly completed DS–1884 is accepted becomes the applicant's priority date. Those same regulations at 22 CFR 42.34(b)(4) provide that a petition from a qualifying individual is valid for six months from the date of approval or the date an immigrant visa number becomes available, whichever is later.

C. What is the impact of the ESSAA?

Prior to passage of the ESSAA, if the employee were to die before entering the United States using their immigrant visa, the surviving spouse or child would be ineligible for immigrant status. With the passage of the ESSAA, a surviving spouse and surviving child(ren), as a principal applicant, are eligible to seek qualification as a special immigrant. Additionally, in situations where the employee did not pursue special immigrant status prior to the employee's death, their surviving spouse and/or child may now qualify to be approved for status. These changes apply retroactively, meaning that the surviving spouse or child of an employee who died prior to the effective date of the ESSAA may also seek to qualify. To be a surviving spouse, the spousal relationship must have existed at the time of the deceased employee's death. To be a surviving child, the adult son or daughter of the deceased employee must have met the definition of ''child'' under INA section 101(b)(1) on the date of the employee's death.

II. Changes the Department Is Making

A. 22 CFR 42.11

This rule makes updates to the Department's regulations at 22 CFR 42.11 that list the symbols of the current immigrant visa classifications to conform with the new classifications added by the ESSAA. Specifically, under the ''Employment 4th Preference (Certain Special Immigrants)'' header, the Department is adding: The ''SS1'' symbol that will be used for issuance of SIVs to the surviving spouse or child of a U.S. Government employee; the ''SS2'' symbol that will be used for issuance of an SIV to the current spouse of an SS1 who qualifies as a derivative under INA 203(d); and the ''SS3'' symbol that will be used for issuance of an SIV to the minor child(ren) of an SS1 who meet(s) the definition of ''child'' under INA 101(b)(1) and 203(h), and qualify(ies) as a derivative under INA 203(d).

B. 22 CFR 42.34

This rule makes changes to Department regulations at 22 CFR 42.34 to conform with the expanded definition of ''special immigrant'' under the ESSAA. For the reasons explained below, the Department believes these (or

equivalent) changes are necessary to implement the best reading of the ESSAA. The changes include the explanation of the classification of a surviving spouse or child of an employee of the United States Government abroad who was killed in the line of duty, or who performed faithful service for at least fifteen years before their death.

As summarized above, the ESSAA added a new subsection (ii) to INA 101(a)(27)(D) and amended INA 101(a)(27)(D) to specify that a ''special immigrant'' includes an individual described in clause (D)(i) ''or'' clause (D)(ii). The ESSAA did not amend INA 204(a)(1)(G)(ii), which governs the process through which an individual petitions for status ''as a special immigrant under INA 101(a)(27)(D).'' Consequently, as this provision was not amended to distinguish the petition process for special immigrants described in INA 101(a)(27)(D)(i) or INA 101(a)(27)(D)(ii), INA 204(a)(1)(G)(ii) continues to govern the petition process for both subcategories of ''special immigrants'' described in section 101(a)(27)(D), providing that applicants seeking status under either subcategory ''may file a petition . . . only after notification by the Secretary of State that such status has been recommended and approved pursuant to such section.'' Although INA 101(a)(27)(D)(ii) as amended does not expressly reference a framework for recommendation and approval, INA 101(a)(27)(D)(i) establishes the standards for a recommendation and approval process, including that the recommendation of an individual for special immigrant status be made in ''exceptional circumstances'' and the approval be ''in the national interest,'' as well as identifies officers vested with authority for those respective functions. Incorporating into INA 101(a)(27)(D)(ii) the standards and process for recommendation and approval expressly provided by Congress in INA 101(a)(27)(D)(i) reflects the best reading of the statutory framework as amended by ensuring consistency with the companion provision in INA 204(a)(1)(G)(ii) requiring recommendation and approval of such cases and ensuring the consistent application of the longstanding framework for the granting of special immigrant visas to U.S. Government employees.

To address potential inconsistencies in how this change would be implemented using the existing definition of ''exceptional circumstances'' at 22 CFR 42.34(c)(7), this rule explains the circumstances in which a surviving spouse or child would be recommended for special immigrant status, based on the criteria described in INA section 101(a)(27)(D)(ii). In addition to qualifying employees' deaths that occurred in the line of duty, these include when the deceased employee performed at least 15 years of faithful service for the U.S. Government and either would have qualified for special immigrant status before dying or was employed by the U.S. Government as of the date of their death or in the immediately preceding five-year period. These parameters will encompass those family members of deceased employees who, but for their death following at least 15 years of faithful service, were likely to have soon qualified for special immigrant status by accumulating 20 years of faithful service (where 20 years is a strong indicator of exceptional circumstances under 22 CFR 42.34(c)(7)(ii)(E)). This standard encompasses those who were employed by the U.S. Government in the period immediately preceding their death, as the Department anticipates that in some cases, an employee may have ceased employment by the U.S. Government with the intention of returning, but for circumstances out of their control. For example, an employee who dies following a serious illness may have ceased or temporarily left their employment for a period to combat their illness. Consequently, to provide clarity to the public and support consistent application, the rule establishes a rebuttable presumption that a death occurring more than five years after cessation of employment is not related to the cessation of their employment for purposes of their surviving spouse or child qualifying for special immigrant status.

The Department believes this five-year presumption will account for the gravity and severity of the circumstances surrounding cessation of employment, and the likelihood that a previously employed individual would have returned to work to complete 20 years of service, if they were able to do so. This presumption is rebuttable and will require case-specific consideration of those individuals whose circumstances fall outside the five-year presumption and who wish to provide evidence to establish their qualifications. Surviving spouses and children of employees who died for reasons unrelated to cessation of employment are not precluded from qualifying as special immigrants, provided they can demonstrate that the employee demonstrated at least one form of ''exceptional circumstances'' while still employed. The changes also highlight that the processes to qualify for eligibility are the same for a surviving spouse or child as they are for employees. These changes make necessary amendments to 22 CFR 42.34 to provide for the issuance of SIVs to qualified surviving spouses and children of U.S. Government employees, and to reflect the amended citations in INA section 101(a)(27)(D) under the ESSAA.

This rule also makes corrections throughout 22 CFR 42.34 to replace the term ''alien'' with the term ''applicant'' or ''employee,'' as appropriate. This change is consistent with current Department practice.[1]

Finally, this rule also amends the certification, required as part of the principal officer's recommendation, that the individual being recommended is prepared to pursue an immigrant visa application ''within one year of the Department's notification to the post of approval of special immigrant status.'' As applicants in numerically limited immigrant visa categories, including INA section 203(b)(4), may not pursue an immigrant visa application until such time that a visa number becomes available in that category, this requirement has been changed to reflect that the recommended individual must be prepared to pursue their application ''within one year of the Department's notification to the post of approval of special immigrant status, or of an immigrant visa becoming available, whichever is later.''

Regulatory Findings

A. Administrative Procedure Act

This rule is exempted from the notice and comment and delayed effective date rulemaking procedures set forth in 5 U.S.C. 553 because the rule involves a foreign affairs function. 5 U.S.C. 553(a)(1). This exemption applies when the rule's subject matter ''is clearly and directly involved in a foreign affairs function.'' *Mast Indus.* v. *Regan,* 596 F. Supp. 1567, 1582 (C.I.T. 1984) (quotation marks omitted). In addition, although the text of the APA does not require an agency invoking this exemption to show that rulemaking with public notice and comment would result in ''definitely undesirable international consequences,'' some courts have required such a showing. *See, e.g., Yassini* v. *Crosland,* 618 F.2d 1356, 1360 n.4 (9th Cir. 1980). This rule satisfies both standards.

[1] *See* 88 FR 45072 (July 14, 2023).

This rule extends the authority to grant special immigrant status to the surviving spouse or child of a U.S. Government employee who performed faithful service for at least fifteen years or was killed in the line of duty. As with the availability of special immigrant status to qualifying locally employed staff, eligibility for employees' surviving spouses and children encourages employees to remain in their jobs and to provide long-term, institutional memory to U.S. Government agencies abroad. This is particularly essential in countries where local staff members and their families face retribution by the host government, making it even more challenging to recruit and retain a locally employed workforce. For this reason, extending eligibility to the employee's surviving spouse and children critically impacts the willingness of foreign nationals to become, and remain, employees of the U.S. Government in overseas posts, and hence directly impacts the effectiveness of U.S. diplomatic efforts in those countries.

The Department's establishment of criteria for surviving spouses and child(ren) to qualify for special immigrant status under ESSAA clearly and directly relates to U.S. foreign affairs, because the criteria itself is critical for the U.S. Government to recruit and retain loyal, valuable local staff outside the United States, without whom the Department could not fulfill its diplomatic functions overseas. The Department alone employs approximately 50,000 local staff at over 200 Foreign Service posts overseas. Expanded qualifications for surviving spouses and child(ren) is critical to recruitment, retention, and morale of these locally employed staff who help the Department carry out its foreign affairs functions overseas. For example, following the 2013 death of Mustafa Akarsu, a member of the local guard force for U.S. Embassy Ankara for 22 years, when he confronted a suicide bomber outside the Embassy, Department employee organizations including the American Foreign Service Association, advocated for passage of legislation eventually enacted in ESSAA to provide SIVs to the surviving spouses and children of U.S. Government employees killed in the line of duty. Consequently, implementation of these standards for surviving family members clearly and directly involves a U.S. foreign affairs function.

Finally, the Department considers that providing the opportunity for public notice and comment would provide ''definitely undesirable international consequences,'' in that conducting and resolving a public debate regarding the safety of surviving spouses and children of U.S. Government employees killed abroad would risk impairing U.S. relations with other countries. *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008). The loss of United States local employees in the line of duty has previously had the effect of straining bilateral relations, and has the continued potential to do so, particularly when such losses involve local foreign authorities or other parties over which the host country exercises control. This may be even more so in countries with which the United States already has sensitive or strained relations, which may oppose the availability of immigrant visas to the surviving spouses and children of such staff, who are usually nationals of the host country. Accordingly, the promulgation of standards for approval under the Secretary of State's authority in INA 101(a)(27)(D) involves an inherently foreign affairs function of the Department of State.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

As this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(a)(1), it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nonetheless, as this action only directly impacts visa applicants, the Department certifies that this rule will not have a significant economic impact on a substantial number of small U.S. entities.

C. Congressional Review Act of 1996

This rule is not a major rule as defined in 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

D. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)

This rule has been drafted in accordance with the principles of Executive Orders 12866 (as amended by Executive Order 14094) and 13563. The Department has submitted this rule to OIRA for review and it has been deemed a significant regulatory action.

E. Executive Order 12988: Civil Justice Reform

The Department of State has reviewed the rule considering sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burdens.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of State has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal Governments, and will not pre-empt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

G. Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. The Form DS–1884, Petition to Classify Special Immigrant under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, is approved under the PRA (OMB Control No. 1405–0082).

H. Other

The Department has also considered the Unfunded Mandates Reform Act of 1995 and Executive Orders 12372 and 13132 and affirms this rule is consistent with the applicable mandates or guidance therein.

List of Subjects in 22 CFR Part 42

Administrative practice and procedure, Aliens, Passports and visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 42 is amended as follows:

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 108–449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901–14954 (Pub. L. 106–279, 114 Stat. 825); 8 U.S.C. 1101 (Pub L. 117–31, 135 Stat. 309); 8 U.S.C. 1154 (Pub. L. 109–162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114–70, 129 Stat. 561).

■ 2. Section 42.11 is amended in table 1 to § 42.11 under the undesignated

center heading ''Employment 4th Preference (Certain Special Immigrants)'' by:

■ a. Revising the entries for SE1, SE2, SE3, and SS1; and

■ b. Adding entries for SS2 and SS3 in alphanumeric order.

The revisions and additions read as follows:

§ 42.11 Classification symbols.

* * * * *

TABLE 1 TO § 42.11

Symbol	Class	Section of Law
*	*	*
Employment 4th Preference (Certain Special Immigrants)		
*	*	*
SE1	Certain Employee or Former Employee of the U.S. Government Abroad	INA 101(a)(27)(D)(i) & INA 203(b)(4).
SE2	Spouse of SE1	INA 101(a)(27)(D)(i) & INA 203(b)(4).
SE3	Child of SE1	INA 101(a)(27)(D)(i) & INA 203(b)(4).
*	*	*
SS1	Surviving Spouse or Child of an Employee of the United States Government Abroad.	INA 101(a)(27)(D)(ii) & INA 203(b)(4).
SS2	Current Spouse of SS1	INA 101(a)(27)(D)(ii), INA 203(b)(4) & INA 203(d).
SS3	Child of SS1 (Excludes Surviving Child of an Employee of the United States Government Abroad), provided the child meets the definition of 101(b)(1) of the INA.	INA 101(a)(27)(D)(ii), INA 1101(b)(1), 203(b)(4), & INA 203(d).
*	*	*

■ 3. Section 42.34 is revised to read as follows:

§ 42.34 Special immigrant visas–certain U.S. Government employees.

(a) *General.* An applicant is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) provided:

(1) (i) The applicant has performed faithful service to the United States Government abroad, or the American Institute in Taiwan, for a total of fifteen years or more; or

(ii) The applicant is the surviving spouse or child of an employee of the United States Government abroad who performed faithful service for a total of not less than 15 years or was killed in the line of duty; and

(2) The principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director), recommends granting special immigrant status to such person in exceptional circumstances; and

(3) The Secretary of State, or designee, approves such recommendation and finds that it is in the national interest to grant such status.

(b) *Petition requirement.* An applicant who seeks classification as a special immigrant described in paragraph (a) of this section must file a Form DS–1884, Petition to Classify Special Immigrant under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, or the Surviving Spouse or Child of an Employee of the U.S. Government Abroad, with the Department of State. An applicant described in INA 101(a)(27)(D) may file such a petition only after, but within one year of, notification from the Department that the Secretary of State or designee has approved a recommendation from the principal officer that special immigrant status be accorded the applicant in exceptional circumstances and has found it in the national interest to do so.

(1) *Petition fees.* The Secretary of State shall establish a fee for the filing of a petition to accord status under INA 203(b)(4) which shall be collected following notification that the Secretary of State, or designee, has approved the recommendation that the applicant be granted status as a special immigrant under INA 101(a)(27)(D).

(2) *Establishing priority date.* The priority date of an applicant seeking status under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) shall be the date on which the petition to accord such classification, the DS–1884, is filed. The filing date of the petition is the date on which a properly completed form and the required fee are accepted by a Foreign Service post. Pursuant to INA 203(d), and whether named in the petition, the current spouse or child who meets the definition of ''child'' under INA 101(b)(1) of an applicant classified under INA 203(b)(4), if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to the classification and priority date of the beneficiary of the petition.

(3) *Delegation of authority to approve petitions.* The authority to approve petitions to accord status under INA 203(b)(4) to an applicant described in INA 101(a)(27)(D) is hereby delegated to the chief consular officer at the post of recommendation or, in the absence of the consular officer, to any alternate approving officer designated by the principal officer. Such authority may not be exercised until the Foreign Service post has received formal notification of the Secretary of State or designee's approval of special immigrant status for the petitioning applicant.

(4) *Petition validity.* Except as noted in this paragraph, the validity of a petition approved for classification under INA 203(b)(4) shall be six months beyond the date of the Secretary of State's approval thereof or the availability of a visa number, whichever is later.

(5) *Extension of special immigrant status and petition validity.* If the principal officer of a post concludes that circumstances in a particular case are such that an extension of validity of the Secretary of State or designee's approval of the principal officer's recommendation or of the petition would be in the national interest, the

principal officer shall recommend to the Secretary of State or designee that such validity be extended for not more than one additional year.

(c) *Definitions*—(1) *Full-time service.* Where 15 years of service is the minimum time required for eligibility for a special immigrant visa, the employee must have been employed for a total of at least 15 full-time years, or the equivalent thereof, in the service of the U.S. Government abroad. The number of hours per week that qualify an employee as full-time is dependent on local law and prevailing practice in the country where the individual is or was employed, as reflected in the employment documentation submitted with the application for special immigrant status. The years of service may be met based on employment abroad with one, or more than one, agency of the U.S. Government provided the total amount of full-time service with the U.S. Government is 15 years or more, or the equivalent thereof.

(2) *Faithful service.* Where faithful service is required for eligibility for a special immigrant visa, an employee must have performed faithfully in the position held. The principal officer has the primary responsibility for determining whether the employee's service meets this requirement. A record of disciplinary actions that have been taken against the employee does not automatically disqualify the applicant. The principal officer must assess the record of disciplinary actions considering the extent and gravity of the misconduct and when the incidents occurred, and determine whether the record as a whole, notwithstanding disciplinary actions, is one of faithful service.

(3) *Continuity.* Where 15 years of service is the minimum time required for eligibility for a special immigrant visa, the employee's period of service need not have been continuous but must have an aggregate total of 15 years of service to qualify.

(4) *Abroad.* The service must have occurred anywhere outside the United States, as the term ''United States'' is defined in INA 101(a)(38).

(5) *Employment at the American Institute in Taiwan.* INA 101(a)(27)(D) permits both present and former employees of the American Institute in Taiwan to apply for special immigrant status. An employee's service before and after the founding of the American Institute in Taiwan is counted toward the minimum 15 years of service requirement.

(6) *Honorably retired.* Separations within the meaning of ''honorably retired'' include, for example, those resulting from mandatory or voluntary retirement, reduction-in-force, or resignation for personal reasons. Separations not within the meaning of ''honorably retired'' would include a termination for cause or an involuntary termination or resignation in lieu of a termination for cause.

(7) *Exceptional circumstances for employees of the United States Government abroad.* For classification as a special immigrant under INA 101(a)(27)(D)(i), the principal officer must determine that an employee demonstrates at least one form of ''exceptional circumstances'' to support an application for special immigrant status.

(i) *Prima facie indicators of exceptional circumstances.* In the following situations, an employee's service with the U.S. Government generally will be deemed to have met exceptional circumstances.

(A) Diplomatic relations between the employee's country of nationality and the United States have been severed;

(B) Diplomatic relations between the country in which the employee was employed and the United States have been severed;

(C) The country in which the employee was employed and the United States have strained relations and the employee may be subjected to retribution by the local, State, Federal, or other official government body merely because of association with the U.S. Government, or the employee may be pressured to divulge information contrary to U.S. national interests; or

(D) The employee was hired at the Consulate General at Hong Kong on or before July 1, 1999.

(ii) *Strong indicators of exceptional circumstances.* (A) It is believed that continued service to the U.S. Government might endanger the life of the employee;

(B) The employee has fulfilled responsibilities or given service in a manner that approaches the heroic;

(C) The employee has been awarded a global or a regional ''Foreign Service National of the Year'' Award;

(D) The employee has disclosed waste, fraud or abuse, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation within the Department or other U.S. Government agency, if such disclosure results in significant action by the Department or other U.S. Government agency against an offending party, such as termination or severance of a contractual relationship, or criminal charges against any person or entity.

(E) The employee has served the U.S. Government for a period of twenty years or more.

(8) *Exceptional circumstances for surviving spouses and children.* For classification as a special immigrant under INA 101(a)(27)(D)(ii), the principal officer must determine that the deceased employee:

(i) Was killed in the line of duty; or

(ii) Performed faithful service to the United States Government abroad for a total of not less than 15 years; and

(A) Was employed by the U.S. Government as of the date of their death or in the immediately preceding period as defined in paragraph (c)(9) of this section, or

(B) Was an honorably retired former employee who, prior to their death, demonstrated at least one form of ''exceptional circumstances'' as defined in paragraph (c)(7) of this section.

(9) *Immediately preceding period.* (i) As provided in paragraph (c)(8)(ii)(A) of this section, a deceased employee is considered to have been employed by the U.S. Government in the period immediately preceding their death if such employment ceased due to circumstances that resulted in their death.

(ii) A deceased employee is presumed to not meet the criteria in paragraph (c)(8)(ii)(A) of this section if the employee's death occurred more than five years following cessation of employment. This presumption can be rebutted if the applicant establishes, to the satisfaction of the principal officer, that the employment ceased due to circumstances that resulted in the employee's death, and the Secretary or appropriate designee finds it in the national interest to grant such status. The principal officer has the primary responsibility for determining whether the applicant meets this criterion, taking into consideration as informed by the circumstances of the cessation of employment, the cause of the employee's death as documented by the applicant, and other relevant evidence the applicant presents that demonstrates that the cessation of employment was for reasons that ultimately resulted in the employee's death.

(10) *Immediate intent to immigrate.* (i) The recommendation of the principal officer must certify that the applicant being recommended is prepared to file a petition within one year of the Department's notification to the post of approval of special immigrant status, and to pursue an immigrant visa application within six months of the Secretary of State's approval of the petition or of an immigrant visa becoming available, whichever is later.

If the applicant is an employee who is not yet honorably retired, the recommendation must also certify that the employee intends permanent separation from U.S. Government employment abroad no later than the date of departure for the United States following issuance of an immigrant visa.

(ii) Employees of Hong Kong Consulate General hired on or before July 1, 1999, are not required to establish immediate intent to immigrate. Employees of the Hong Kong Consulate General who received or were approved for special immigrant status before July 1, 1999, also may continue employment with the U.S. Government.

Julie M. Stufft,

Deputy Assistant Secretary, Consular Affairs, Department of State.

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BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Parts 122 and 129

[Public Notice: 12542]

RIN 1400–AF78

International Traffic in Arms Regulations: Registration Fees

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State published a proposed rule on April 24, 2024, requesting comment on proposals to amend the International Traffic in Arms Regulations (ITAR) by increasing and specifying the fees required for registration with the Directorate of Defense Trade Controls (DDTC). The Department now responds to the public comments received in response to that proposed rule and issues this final rule.

DATES: This rule is effective January 9, 2025.

FOR FURTHER INFORMATION CONTACT: Allison Smith, Director, Office of Defense Trade Controls Management, Department of State, telephone (202) 663–1282; email *DDTCCustomerService@state.gov.* ATTN: Registration Fee Change.

SUPPLEMENTARY INFORMATION:

Overview

This final rule implements a change and increase in registration fees for certain persons required under 22 U.S.C. 2778(b) to register with the Department of State's Directorate of Defense Trade Controls (DDTC) and pay a registration fee. It also returns the amount of fees registrants must pay to the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130) and makes clarifying revisions to part 122 of the ITAR. This final rule follows a proposed rule (89 FR 31119), published on April 24, 2024, which included the proposed revisions to DDTC's registration fees and corresponding amendments to the ITAR.

As noted in its proposed rule, for the first time in fifteen years, the Department proposed to revise and increase the registration fees (also referred to as ''fees'') charged to those required to register with DDTC. This increase is necessary because DDTC operations are primarily funded by fees. Without a sufficient increase to meet operational costs that have significantly risen since 2008, DDTC would be faced with untenable budget deficits and would be forced to reduce its services.

In accordance with section 38(b) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(b)) and ITAR § 122.1 (22 CFR 122.1), every person who engages in the business of manufacturing, exporting, temporarily importing, or brokering any defense articles or defense services is required to register with DDTC, the agency charged with administering the relevant sections of the AECA. Section 38(b) of the AECA also requires that every person required to register pay a registration fee. As the ITAR implements section 38 of the AECA, and as its parts 122 and 129 (22 CFR parts 122 and 129) address registration, the Department proposed to revise those provisions to restate registration requirements without substantive change, to revise the Department's methodology for determining the fees paid by certain registrants, to increase registration fees, and to reinsert the actual amount of fees within the ITAR itself. The Department now provides responses to comments received on the proposed rule and amends the ITAR as of the effective date of this rule, with one correction from the proposed rule.

Summary of Changes From the Proposed Rule

In this final rule, the Department makes the changes it previously proposed, with one minor change. Due to a typographical error, the Tier 3 fee multiplier for favorable determinations was misidentified in two places as $1,110 instead of the correct amount of $1,100. The Tier 3 fee multiplier was correctly introduced in the preamble as $1,100 (89 FR 31121), but a subsequent preamble reference to the Tier 3 fee multiplier was misidentified as $1,110 (89 FR 31122). In addition, the incorrect reference was carried forward to amendatory instruction 3 of the proposed rule and identified the Tier 3 fee multiplier at proposed § 122.3(a)(3) as $1,110 (89 FR 31124). This final rule adopts the correct Tier 3 fee multiplier of $1,100 at ITAR § 122.3(a)(3).

Response to Comments

During the 45-day public comment period (April 24, 2024, through June 10, 2024) DDTC received 19 separate submissions from individuals, corporations, and industry associations in response to the notice of proposed rulemaking, some of which discussed more than one aspect of the proposed rule. All relevant comments addressed only ITAR § 122.3, which included proposed changes to the registration fees. The Department received no questions or comments on other changes in the proposed rule.

Several commenters expressed a view that the proposed increase is an unjust burden on small business and may be a barrier to entry for new small business registrants. One commenter in particular claimed that the increase in registration fees would be especially difficult for manufacturers who do not export but are required by large corporations to be registered with DDTC to do business with them and advised the new registration fee would subject their company to paying 1 percent of their gross revenue to be able to sell products domestically for DoD end-use. As a threshold matter, the Department is aware that some private sector businesses elect to have their own separate requirement for businesses with which they contract to be registered with DDTC, even when those contracting businesses are not legally required to register with DDTC under ITAR § 122.1. Such varying requirements by some private sector businesses are outside of the scope of ITAR § 122.1. Pursuant to ITAR § 122.1, persons who are not engaged in the business of manufacturing, exporting, or temporarily importing defense articles are not required by ITAR § 122.1 to register with DDTC. With respect to the fee amount, the Department notes that registrants who do not export fall within Tier 1 and pay the base fee of $3,000. That base fee represents a 33.1 percent increase from the prior Tier 1 fee, which is approximately 12 percent less than the increase for Tier 2 and is slightly less than it would have been had the Department used the 40.1 percent inflation adjustment based on 2008 dollars, when the registration fees were last amended.

The Department acknowledges and understands the commenters' concerns regarding small businesses. In response,