

Justice, including offices of United States Attorneys, to make such disclosures. Prior to these amendments, disclosure authority within the Department of Justice rested only with the Tax Division. The amendments also reflect a change to the law made by the Omnibus Budget Reconciliation Act of 1990 regarding the type of services about which disclosures may be made.

**EFFECTIVE DATE:** These regulations are effective on December 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** Donald Squires, 202-622-4570 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 15, 1995, a notice of proposed rulemaking (DL-40-95) relating to the disclosure of returns and return information in connection with the procurement of property and services for tax administration purposes was published in the Federal Register (60 FR 64402). No public hearing was requested or held nor were any comments submitted by the public in response to this notice.

The regulations proposed by DL-40-95 are adopted by this Treasury decision without revision and are discussed below.

**Explanation of Provisions**

As previously written, 26 CFR 301.6103(n)-1 authorized the Tax Division of the Department of Justice, among other entities and individuals, to disclose returns and return information pursuant to section 6103(n) of the Internal Revenue Code. This authority allowed the Tax Division to disclose tax information incident to its contracts to private parties for, among other purposes, automated litigation support services.

The Department of Justice indicated its intention to establish an expanded automated tracking system for all monetary judgments in favor of the United States, which will be operated by a private company under contract with the Department. Although the majority of tax cases are handled by the Tax Division, there are several United States Attorneys' offices that also have litigation responsibility in the civil tax area. In addition, the Tax Division refers some judgments in tax cases to the United States Attorneys for collection. The previously existing regulations arguably would not have permitted these offices, which are technically not part of the Tax Division, to disclose tax information incident to their inclusion of tax judgments in the automated tracking system.

The amendments adopted by this Treasury decision authorize the Department of Justice, including offices of United States Attorneys, to make disclosures to procure property and services for tax administration purposes. Any such disclosures will be made under the same conditions and restrictions already set forth in the previously existing regulations. By definition, any office within the Department of Justice without tax administration duties will not have occasion or authority pursuant to these regulations to make such disclosures.

The amendments also authorize disclosures in connection with "the providing of other services," i.e., services not related to the strict mechanical processing or manipulation of tax returns or return information. This conforms the regulations to the language of the statute, as amended by the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, 104 Stat. 1388-353).

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS, Department of Justice and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Adopted Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

**PART 301—PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Paragraph 2. Section 301.6103(n)-1 is amended as follows:

1. The first sentence of paragraph (a) introductory text is amended by removing the language "Tax Division,".
2. Paragraph (a)(2) is amended by removing the language "or to".
3. Paragraph (a)(2) is further amended by adding the language "or the providing of other services," immediately following the text "other property,".
4. The concluding text of paragraph (a) is amended by removing the language "Tax Division,".
5. The second sentence of paragraph (d) introductory text is amended by removing the language "Tax Division,".
6. Paragraph (d)(2) is amended by removing the language "Tax Division,".
7. Paragraph (e)(1) is amended by removing the language ", and" at the end of the paragraph and adding a semicolon in its place.
8. Paragraph (e)(2) is amended by removing the period at the end of the paragraph and adding "; and" in its place.
9. Paragraph (e)(3) is added.
10. The authority citation immediately following § 301.6103(n)-1 is removed.

The addition reads as follows:

**§ 301.6103(n)-1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.**

\* \* \* \* \*

(e) \* \* \*

(3) The term *Department of Justice* includes offices of the United States Attorneys.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved: June 26, 1996.  
Donald C. Lubick,  
*Acting Assistant Secretary of the Treasury.*  
[FR Doc. 96-31769 Filed 12-16-96; 8:45 am]

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**26 CFR Part 301**

[TD 8694]

RIN 1545-AS52

**Disclosure of Return Information to the U.S. Customs Service**

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

**ACTION:** Final regulations.

**SUMMARY:** These amendments to the regulations under 26 CFR part 301 implement section 6103(l)(14) of the Internal Revenue Code, which authorizes the disclosure of certain return information to the U.S. Customs Service. The regulations specify the procedure by which return information may be disclosed and describe the conditions and restrictions on the use of the information by the U.S. Customs Service.

**EFFECTIVE DATE:** These regulations are effective December 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** Donald Squires, 202-622-4570 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

The North American Free Trade Agreement Implementation Act (Act), Public Law 103-182, 107 Stat. 2057, was signed into law on December 8, 1993. Section 522 of the Act added section 6103(l)(14) to the Internal Revenue Code (Code), authorizing the IRS to disclose certain tax data to the U.S. Customs Service. The Act directed the Treasury Department to adopt temporary regulations to implement the new section.

On March 11, 1994, temporary regulations were published in the Federal Register (59 FR 11547) specifying the procedure by which return information may be disclosed to officers and employees of the United States Customs Service, and describing the conditions and restrictions on the use and redisclosure of that information. A notice of proposed rulemaking (DL-21-94) cross-referencing the temporary regulations was published in the Federal Register for the same day (59 FR 11566).

The IRS received two comments on the proposed regulations but did not hold a public hearing. After consideration of the comments, this Treasury decision adopts the proposed regulations without revision. The comments are discussed below.

## Explanation of Provisions

The regulations authorize disclosure of return information only to the extent necessary to the purposes authorized by the statute, i.e., ascertaining the correctness of entries in audits under the Tariff Act of 1930 and other actions to recover any loss of revenue or collect amounts determined to be due and owing as a result of these audits. The regulations permit redisclosure to the Department of Justice for civil

enforcement actions related to these collection efforts. Consistent with the statute's legislative history, the regulations prohibit disclosure of information (i) relating to Advance Pricing Agreements (as described in Rev. Proc. 91-22 (1991-1 C.B. 526)), or (ii) covered by tax treaties and executive agreements with respect to which the United States is a party. The regulations also specifically prohibit any use or redisclosure of the information by the Customs Service in a manner inconsistent with section 6103 and the regulations.

## Notice to Taxpayers/Importers

One commentator suggested that the regulations should provide taxpayers with advance notice of a Customs Service request for tax data and an opportunity to comment upon or object to the request. The legislation authorizing these disclosures did not, however, make any provision for such advance notice and pre-disclosure challenges to Customs Service requests for disclosure of tax data. Such procedures would, moreover, run counter to the existing statutory scheme of section 6103. Disclosures under section 6103 are governed by the requirements of that statute and applicable regulations, none of which offers a procedural opportunity for a taxpayer to challenge, in advance, a proposed disclosure of tax information by the IRS.

The same commentator suggested that, in the alternative, a taxpayer should be notified in the event of a disclosure so the taxpayer can prepare its response to inquiries from the Customs Service that might be based on such tax data. Otherwise, the commentator argued, the taxpayer would be forced to defend itself against an "unexpressed suspicion" based on information the taxpayer does not know the Customs Service has obtained and possibly has misinterpreted.

Nothing in the statute's legislative history suggests that Congress intended the Service to notify taxpayers upon disclosure of their tax data to the Customs Service. As noted above, such a requirement would be at odds with general practice under section 6103. Moreover, the IRS understands that the usual practice of the Customs Service is not to request information from the IRS unless the data has been first directly requested from, but not provided by, importers. When importers receive such a request, therefore, they will effectively be on notice, whether or not they choose to comply with the request, that the Customs Service is likely to consider tax information in the course of its audit.

## Misinterpretation of Tax Data by Customs

Both commentators expressed a concern that due to the different reporting requirements of the IRS and the Customs Service, tax data is susceptible to misinterpretation by Customs Service auditors. For example, it was noted that the cost of goods reported for tax purposes includes certain amounts (e.g. duty, transportation, insurance, storage, design costs) not relevant to, or included in, the value of goods for customs purposes.

Congress was aware when it enacted the legislation, however, that IRS tax information may not correlate exactly with the information required to be reported to the Customs Service. Congress nonetheless concluded that the value of the tax information to the Customs Service would outweigh the possible difficulties caused by the necessity of adjusting the IRS data for use in Customs Service audits. Moreover, the Customs Service has informed the IRS that the Customs Service is committed to a policy of full disclosure and communication with importers during audits. In light of that policy, any apparent discrepancies between tax data and Customs Service reporting will be brought to the attention of the importer when discovered in order to allow the importer to explain or reconcile the data. The Customs Service also notes that importers have an additional opportunity to review and comment upon the findings of an auditor before the preparation of the auditor's final report.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS, Customs Service and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

**PART 301—PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 is amended by removing the entry for Section 301.6103(l)(14)-1T and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 301.6103(l)(14)-1 also issued under 26 U.S.C. 6103(l)(14). \* \* \*

**§ 301.6103(l)(14)-1T [Redesignated as § 301.6103(l)(14)-1]**

Par. 2. Section 301.6103(l)(14)-1T is redesignated as § 301.6103(l)(14)-1 and the section heading is amended by removing the language “(temporary)”.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved: November 13, 1996.

Donald C. Lubick,

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 96-31771 Filed 12-16-96; 8:45 am]

BILLING CODE 4830-01-U

**DEPARTMENT OF JUSTICE**

**28 CFR Part 14**

**Administrative Claims Under the Federal Tort Claims Act; Delegation of Authority**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This Directive delegates authority to the Postmaster General to settle administrative claims presented pursuant to the Federal Tort Claims Act where the amount of the settlement does not exceed \$200,000. The Directive implements the Administrative Dispute Resolution Act. This Directive will alert the general public to the new authority and is being published in the CFR to

provide a permanent record of this delegation.

**EFFECTIVE DATE:** December 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, (202) 616-4400.

**SUPPLEMENTARY INFORMATION:** This Directive has been issued to delegate settlement authority and is a matter solely related to division of responsibility between the Department of Justice and the Postal Service. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a significant regulation action within the meaning of Executive Order No. 12866.

**List of Subjects in 28 CFR Part 14**

Authority delegations (Government agencies), Claims.

By virtue of the authority vested in me by part 0 of Title 28 of the Code of Federal Regulations, including §§ 0.45, 0.160, 0.162, 0.164, and 0.168, 28 CFR part 14 is amended as follows:

**PART 14—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT**

1. The authority citation for Part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 2672; 38 U.S.C. 224(a).

2. The Appendix to Part 14 is amended by revising the heading and text for the “Delegation of Authority to the Postmaster General” to read as follows:

**Appendix to Part 14—Delegations of Settlement Authority**

\* \* \* \* \*

Delegation of Authority to the Postmaster General

Section 1. Authority to compromise tort claims.

(a) The Postmaster General shall have the authority to adjust, determine, compromise and settle a claim involving the Postal Service under Section 2672 of Title 28, United States Code, relating to the administrative settlement of federal tort claims, if the amount of the proposed adjustment, compromise, or award does not exceed \$200,000. When the Postmaster General believes a claim pending before him presents a novel question of law or of policy, he shall obtain the advice of the Assistant Attorney General in charge of the Civil Division.

(b) The Postmaster General may redelegate in writing the settlement authority delegated to him under this section.

Section 2. Memorandum.

Whenever the Postmaster General settles any administrative claim pursuant to the authority granted by section 1 for an amount

in excess of \$100,000 and within the amount delegated to him under section 1, a memorandum fully explaining the basis for the action taken shall be executed. A copy of this memorandum shall be sent to the Director, FTCA Staff, Torts Branch of the Civil Division.

\* \* \* \* \*

Frank W. Hunger,

*Assistant Attorney General, Civil Division.*

[FR Doc. 96-31923 Filed 12-16-96; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 917**

**[KY-208-FOR]**

**Kentucky Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the “Kentucky program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky proposed revisions to its regulations pertaining to civil penalties, performance bond and liability insurance, contemporaneous reclamation, and revegetation. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations and SMCRA.

**EFFECTIVE DATE:** December 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Director, OSM, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233-2894.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Kentucky Program
- II. Submission to the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Kentucky Program**

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, Federal Register (47