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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505-AC33

Privacy Act of 1974; Implementation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of an amendment to this part to reflect consolidation of existing Internal Revenue Service (IRS) systems of records and to continue to exempt the resulting revised systems of records from certain provisions of the Privacy Act. The Office of Chief Counsel has consolidated twelve systems of records into six systems of records. This final rule migrates the previously approved exemptions to the newly revised, renamed, and renumbered systems of records.

DATES: This rule is effective [Insert Date of Publication in the *Federal Register*].

ADDRESSES: Inquiries may be addressed to Sarah Tate, Office of Associate Chief Counsel, Procedure & Administration, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Sarah Tate, Office of Associate Chief Counsel, Procedure & Administration, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224. Ms. Tate may be reached via telephone at (202) 622-4570 (not a toll-free call).

SUPPLEMENTARY INFORMATION: When the IRS first promulgated its systems of records in 1975, the Office of Chief Counsel was aligned, in its headquarters operations, by the nature of the work performed and, in its field operations, by the type of the litigation activities performed. In 1998, Congress enacted the Internal Revenue Restructuring & Reform Act (RRA98), which, among other things, mandated the most dramatic organizational changes in the IRS (and the Office of Chief Counsel) since 1952. RRA98 directed the IRS to shift from a geographically based structure to a structure that serves particular groups of taxpayers with similar needs (i.e., individuals, small businesses, large businesses, and tax exempt entities). The Office of Chief Counsel reorganized itself to more closely align to the restructured IRS, and the revised notices simplify the manner in which the Office of Chief Counsel maintains individually identifiable information. This direct final rule does not alter the exemptions claimed for the individually identifiable information maintained in the consolidated systems of records.

The Chief Counsel, IRS has reorganized the twelve systems of records it maintains pursuant to the Privacy Act, which have been consolidated into six systems of records. These systems of records contain information maintained by the IRS for which an exemption has been established previously. On October 2, 1975, the Department published its final rule which included the exemption claimed pursuant 5 U.S.C. 552a(j)(2) and, (k)(2), published at 40 FR 45695, and the exemption claimed pursuant to 5 U.S.C. 552a(k)(5), published at 40 FR 45697.

The Department of the Treasury is publishing separately in the *Federal Register* the notices of the consolidated systems of records to be maintained by IRS.

Under 5 U.S.C. 552a(j)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is “maintained by an agency or component thereof which performs as its principal function any

activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.”

To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C.552a(j)(2), the Department of the Treasury has previously exempted material which will now be maintained in the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2):

Treasury/IRS 90.001 - Chief Counsel Management Information System Records

Treasury/IRS 90.003 - Chief Counsel Litigation and Advice (Criminal) Records

Treasury/IRS 90.004 - Chief Counsel Legal Processing Division Records

Treasury/IRS 90.005 - Chief Counsel Library Records

The exemption under 5 U.S.C. 552a(j)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is

“investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2).” To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C. 552a(k)(2), the Department of the Treasury has previously exempted material that will now be maintained in the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2):

Treasury/IRS 90.001 - Chief Counsel Management Information System Records

Treasury/IRS 90.002 - Chief Counsel Litigation and Advice (Civil) Records

Treasury/IRS 90.004 - Chief Counsel Legal Processing Division Records

Treasury/IRS 90.005 - Chief Counsel Library Records

The exemption under 5 U.S.C. 552a(k)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

The following are the reasons why the investigative material contained in the above-referenced systems of records maintained by IRS have been exempted from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and/or 5 U.S.C. 552a(k)(2) since 1975.

(1) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to themselves. Disclosure of this information to the subjects of investigations would provide individuals with information concerning the nature and scope of any current investigation. Further, providing information as required by this provision would alert the individual to the existence of an investigation and afford the individual an opportunity to attempt to conceal his/her criminal activities so as to avoid apprehension, may enable the individual to avoid detection or apprehension, may enable the destruction or alteration of evidence of the criminal conduct that would form the basis for an arrest, and could impede or

impair IRS's ability to investigate the matter. In addition, to provide this type of information may enable individuals to learn whether they have been identified as subjects of investigation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access, or concern procedures by which an individual may gain access, to records pertaining to themselves. Disclosure of this information to the subjects of investigations would provide them with information concerning the nature and scope of any current investigation, may enable them to avoid detection or apprehension, may enable them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and could impede or impair IRS's ability to investigate the matter. In addition, permitting access to investigative files and records could disclose the identity of confidential sources and the nature of the information supplied by informants as well as endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide IRS with valuable information unless they believe that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair IRS's ability to perform its law enforcement responsibilities. Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities, thereby endangering the physical safety of those undercover officers by exposing them to possible reprisals. Permitting access in keeping with these provisions would also discourage other law enforcement and regulatory agencies from freely sharing information with IRS and thus would restrict its access to information necessary to accomplish its mission most effectively.

(3) 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend upon the individual having access to his or her records, and since an exemption from the provisions of 5 U.S.C. 552a relating to access to records is proposed, for the reasons set out in the preceding paragraph of this section, these provisions should not apply to the above-listed systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. Making accountings of disclosures available to the subjects of investigations would alert them to the fact that IRS is conducting an investigation into their activities as well as identify the nature, scope, and purpose of that investigation. Providing accountings to the subjects of investigations would alert them to the fact that IRS has information regarding their activities and could inform them of the general nature of that information. The subjects of the investigations, if provided an accounting of disclosures, would be able to take measures to avoid detection or apprehension by altering their operations or by destroying or concealing evidence that would form the basis for detection or apprehension.

(5) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity

to request amendment of records pertaining to the individual, and since an exemption from the provisions of 5 U.S.C. 552a relating to access to, and amendment of, records is proposed for the reasons set out in paragraph (2) of this section, this provision should not apply to these systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. Revealing sources of information could disclose investigative techniques and procedures, result in threats or reprisals against confidential informants by the subjects of investigations, and cause confidential informants to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. The term “maintain,” as defined in 5 U.S.C. 552a(a)(3), includes “collect” and “disseminate.” The application of this provision could impair IRS's ability to collect and disseminate valuable law enforcement information. In the early stages of an investigation, it may be impossible to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon review of information developed subsequently, prove particularly relevant and necessary to a law enforcement program. Compliance with the records maintenance criteria listed in the foregoing provision would require IRS to periodically update the investigatory material it collects and maintains in these systems to ensure that the information remains timely and complete. Further, IRS oftentimes will uncover evidence of violations of law that fall within the investigative jurisdiction of other law

enforcement agencies. To promote effective law enforcement, IRS will refer this evidence to other law enforcement agencies, including State, local, and foreign agencies, that have jurisdiction over the offenses to which the information relates. If required to adhere to the provisions of 5 U.S.C. 552a(e)(1), IRS might be placed in the position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to IRS's attention during the collection and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the above-referenced systems of records would impair IRS's ability to collect, analyze, and disseminate investigative, intelligence, and enforcement information. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify the accuracy of the information obtained. IRS often collects information about the subject of a criminal investigation from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a credible source for information regarding his or her alleged criminal activities. An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual, whom it asks to supply information, of the agency's authority for soliciting the information, whether disclosure of information is voluntary or mandatory, the principal purpose(s) for which the agency will use the information, the routine uses that may be made of the information, and the effects on the

individual of not providing all or part of the information. The above-referenced systems of records should be exempted from these provisions to avoid impairing IRS's ability to collect and maintain investigative material. Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress. Further, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. In collecting information during a criminal investigation, it is often neither possible nor feasible to determine accuracy, relevance, timeliness, or completeness at the time that the information is collected. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when analyzed with other available information, become more relevant as an investigation progresses. Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic review of IRS's investigative records to insure that the records maintained in the system remain timely, accurate, relevant, and complete.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The above-referenced systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The investigatory information in the above-referenced systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which this would exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which IRS is exempted. Exemption from this provision will also protect IRS from baseless civil court actions that might hamper its ability to collect, analyze, and disseminate investigative, intelligence, and law enforcement data.

Under 5 U.S.C. 552a(k)(5), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment or access to classified information,

but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act.

This paragraph applies to the following system of records maintained by the Internal Revenue Service: Treasury/IRS 90.006 - Chief Counsel Human Resources and Administrative Records Files.

The Department has previously exempted material that will now be maintained in the above system of records of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(5): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(1) The sections of 5 U.S.C. 552a from which the system of records has been exempted since 1975 include in general those providing for individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of the Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the systems shall be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The Department believes that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its

information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

(2) If any investigatory material contained in the above-named systems becomes involved in criminal or civil matters, exemptions of such material under 5 U.S.C. 552a (j)(2) or (k)(2) is hereby claimed.

These regulations are being published as a final rule because the amendments do not impose any requirements on any member of the public. This amendment is the most efficient means for the Treasury Department to implement its internal requirements for complying with the Privacy Act.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary and finds good cause for making this rule effective on the date of publication in the Federal Register.

In accordance with Executive Order 12866, it has been determined that this rule is not a “significant regulatory action” and, therefore, does not require a Regulatory Impact Analysis.

The regulation will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Department of the Treasury has determined that this rule will not impose new record-keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy

Part 1, subpart C of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1--[AMENDED]

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

Authority: 5 U.S.C. 301, 31 U.S.C. 321, subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 is amended as follows:

a. Paragraph (c)(1)(viii) is amended by revising the entry for “IRS 90.001”.

b. Paragraph (c)(1)(viii) is further amended by adding entries for “IRS 90.003”; “IRS 90.004”; and “IRS 90.005” to the table in numerical order.

c. Paragraph (g)(1)(viii) is amended by removing entries for “IRS 90.002”; “IRS 90.004”; “IRS 90.005”; “IRS 90.009”; “IRS 90.010”; “IRS 90.013”; and “IRS 90.016”.

d. Paragraph (g)(1)(viii) is further amended by adding entries for “IRS 90.001”; “IRS 90.002”; “IRS 90.004”, and “IRS 90.005” to the table in numerical order.

e. Paragraph (m)(1)(viii) is amended by removing entries for “IRS 90.003” and “IRS 90.011”.

f. Paragraph (m)(1)(viii) is further amended by adding “IRS 90.006” to the table in numerical order.

The revisions and additions read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

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(c) * * *

(1) * * *

(viii) * * *

Number		System name		
*	*	*	*	*
	IRS 90.001.....	Chief Counsel Management Information System Records		
	IRS 90.003.....	Chief Counsel Litigation and Advice (Criminal) Records		
	IRS 90.004.....	Chief Counsel Legal Processing Division Records		
	IRS 90.005.....	Chief Counsel Library Records		

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(g) * * *

(1) * * *

(viii) * * *

Number		System name		
*	*	*	*	*
	IRS 90.001.....	Chief Counsel Management Information System Records		
	IRS 90.002.....	Chief Counsel Litigation and Advice (Civil) Records		
	IRS 90.004.....	Chief Counsel Legal Processing Division Records		
	IRS 90.005.....	Chief Counsel Library Records		

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(m) * * *

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(viii) * * *

Number		System name		
*	*	*	*	*

IRS 90.006..... Chief Counsel Human Resources and Administrative Records

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Dated: October 24, 2011.

Melissa Hartman,
Deputy Assistant Secretary for Privacy, Transparency and Records.

Billing Code: 4830-01-P

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