

the ensuing regulations do not affect the application of these provisions.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has 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 regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on the regulations' impact on small business.

Drafting Information

The principal author of these regulations is James A. Quinn of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS 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 continues to read in part as follows:

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

Par. 2. Section 301.7701-7 is amended as follows:

1. Paragraph (d)(1)(iv) introductory text is revised.
2. Paragraph (d)(1)(iv)(H) is redesignated as paragraph (d)(1)(iv)(J).
3. New paragraphs (d)(1)(iv)(H) and (d)(1)(iv)(I) are added.
4. In paragraph (d)(1)(v), *Example 1* is revised and *Example 5* is added.
5. The first sentence of paragraph (e)(1) is revised.
6. Paragraph (e)(3) is added.

The revisions and additions read as follows:

§ 301.7701-7 Trusts—domestic and foreign.

* * * * *

(d) * * * (1) * * *

(iv) *Safe harbor for certain employee benefit trusts and investment trusts.*

Notwithstanding the provisions of this paragraph (d), the trusts listed in this paragraph (d)(1)(iv) are deemed to satisfy the control test set forth in paragraph (a)(1)(ii) of this section, provided that United States trustees control all of the substantial decisions made by the trustees of the trust—

* * * * *

(H) A group trust described in Rev. Rul. 81-100 (1981-1 C.B. 326) (*See* § 601.601(d)(2) of this chapter);

(I) An investment trust classified as a trust under § 301.7701-4(c), provided that the following conditions are satisfied—

(1) All trustees are United States persons and at least one of the trustees is a bank, as defined in section 581, or a United States Government-owned agency or United States Government-sponsored enterprise;

(2) All sponsors (persons who exchange investment assets for beneficial interests with a view to selling the beneficial interests) are United States persons; and

(3) The beneficial interests are widely offered for sale primarily in the United States to United States persons;

* * * * *

(v) * * *

Example 1. Trust is a testamentary trust with three fiduciaries, A, B, and C. A and B are United States citizens, and C is a nonresident alien. No persons except the fiduciaries have authority to make any decisions of the trust. The trust instrument provides that no substantial decisions of the trust can be made unless there is unanimity among the fiduciaries. The control test is not satisfied because United States persons do not control all the substantial decisions of the trust. No substantial decisions can be made without C's agreement.

* * * * *

Example 5. X, a foreign corporation, conducts business in the United States through various branch operations. X has United States employees and has established a trust as part of a qualified employee benefit plan under section 401(a) for these employees. The trust is established under the laws of State A, and the trustee of the trust is B, a United States bank governed by the laws of State A. B holds legal title to the trust assets for the benefit of the trust beneficiaries. A plan committee makes decisions with respect to the plan and the trust. The plan committee can direct B's actions with regard to those decisions and under the governing documents B is not liable for those decisions. Members of the plan committee consist of United States persons and nonresident aliens, but nonresident aliens make up a majority of the plan committee. Decisions of the plan committee are made by majority vote. In

addition, X retains the power to terminate the trust and to replace the United States trustee or to appoint additional trustees. This trust is deemed to satisfy the control test under paragraph (d)(1)(iv) of this section because B, a United States person, is the trust's only trustee. Any powers held by the plan committee or X are not considered under the safe harbor of paragraph (d)(1)(iv) of this section. In the event that X appoints additional trustees including foreign trustees, any powers held by such trustees must be considered in determining whether United States trustees control all substantial decisions made by the trustees of the trust.

* * * * *

(e) *Effective date*—(1) *General rule.* Except for the election to remain a domestic trust provided in paragraph (f) of this section and except as provided in paragraph (e)(3) of this section, this section is applicable to taxable years ending after February 2, 1999. * * *

* * * * *

(3) *Effective date of safe harbor for certain employee benefit trusts and investment trusts.* Paragraphs (d)(1)(iv) and (v) *Examples 1* and 5 of this section apply to trusts for taxable years ending on or after August 9, 2001. Paragraphs (d)(1)(iv) and (v) *Examples 1* and 5 of this section may be relied on by trusts for taxable years beginning after December 31, 1996, and also may be relied on by trusts whose trustees have elected to apply sections 7701(a)(30) and (31) to the trusts for taxable years ending after August 20, 1996, under section 1907(a)(3)(B) of the SBJP Act.

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Approved: July 31, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[OSD Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary is adding an exemption rule for a Privacy Act system of records. The exemption is intended to increase the value of the system of records and to protect the privacy of individuals identified in the system of records.

In addition, this amendment includes specific language for providing periodic Privacy Act training for DoD personnel who may be expected to deal with the new media or the public.

EFFECTIVE DATE: February 5, 2001.

ADDRESSES: OSD Privacy Act Officer, Washington Headquarter Services, Correspondence and Directives Division, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695-1155.

SUPPLEMENTARY INFORMATION:

The proposed rule was published on December 5, 2000, at 65 FR 75897. No comments were received. Executive Order 12866, "Regulatory Planning and Review". The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, or user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary

and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct 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.

List of Subjects in 32 CFR Part 311

Privacy.

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. In § 311.5, paragraph (a)(7)(ii) is revised as follows:

§ 311.5 Responsibilities.

(a) * * *

(7) * * *

(ii) Provide guidance and training to organizational entities as required by 5 U.S.C. 552a and OMB Circular A-130. Periodic training will be provided to public affairs officers and others who may be expected to deal with the news media or the public.

* * * * *

3. Section 311.8 is amended by adding paragraph (c)(7) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(7) System identifier and name: DGC 20, DoD Presidential Appointee Vetting File.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified

information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to 5 U.S.C. 552a(k)(5) are subsections (d)(1) through (d)(5).

(ii) Authority: 5 U.S.C. 552a(k)(5).

(iii) Reason: From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

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Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Regulation 5400.21]

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency (DLA) is amending its Privacy Act regulations. These changes consist of DLA office code changes and DLA publication name changes. DLA is also adding language to clarify the training requirements for its employees and military members who work with the news media or the public.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767-6183.

SUPPLEMENTARY INFORMATION: The proposed rule was published on October 13, 2000, at 65 FR 60900. No comments were received during the sixty-day public comment period. Therefore, DLA is adopting the amendments.

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of