

decision for purposes of revising that decision.

(d) *New and material evidence*, as that phrase is used in this part, means evidence which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

#### **§ 349.2 Conditions for reopening.**

A final decision may be reopened:

(a) Within 12 months of the date of the notice of such decision, for any reason;

(b) Within four years of the date of the notice of such decision:

(1) If there is new and material evidence; or

(2) If the decision was not reasonably consistent with the evidence of record at the time of adjudication.

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) The decision was that the claimant was not a qualified employee, and he or she is now qualified because compensation was credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To correct errors apparent on the face of the compensation record;

(ii) To enter items transferred by the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(iii) To correct errors made in the allocation of earnings to individuals or periods which would have made him or her a qualified employee at the time of the decision if the earnings had been credited to his or her earnings record at that time;

(3) The decision is wholly or partially unfavorable to a claimant, but only to correct a clerical error or an error that appears on the face of the evidence that was considered when the decision was made.

#### **§ 349.3 Change of legal interpretation or administrative ruling.**

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

#### **§ 349.4 Late completion of timely investigation.**

(a) A decision may be revised after the applicable time period in §§ 349.2(a) or (b) expires if the Board begins an investigation into whether to revise the decision before the applicable time

period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within six months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

#### **§ 349.5 Notice of revised decision.**

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

#### **§ 349.6 Effect of revised decision.**

A revised decision is binding unless:

(a) The revised decision is being reconsidered or appealed in accord with part 320 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

#### **§ 349.7 Time and place to request a review and/or hearing on revised decision.**

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 320 of this chapter. Further review or a hearing will be held according to the rules set forth in part 320 of this chapter.

#### **§ 349.8 Discretion of the three-member Board to reopen or not to reopen a final decision.**

In any case in which the three-member Board may deem proper, the

Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: April 11, 2000.

By Authority of the Board.

For the Board,

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 00-9860 Filed 4-19-00; 8:45 am]

BILLING CODE 7905-01-P

## **DEPARTMENT OF THE TREASURY**

### **31 CFR Part 1**

#### **Internal Revenue Service; Privacy Act of 1974, Proposed Implementation**

**AGENCY:** Office of the Secretary, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Treasury Department, Internal Revenue Service, gives notice of a proposed amendment to exempt the system of records entitled "Criminal Investigation Audit Trail Records System—Treasury/IRS 46.051" from certain provisions of the Privacy Act. The exemption is intended to comply with legal prohibitions against the disclosure of certain kinds of information and to protect certain information on individuals maintained in this system of records.

**DATES:** Comments must be received no later than May 22, 2000.

**ADDRESSES:** Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

**FOR FURTHER INFORMATION CONTACT:** Fu-An Chao, Chief, Systems Development and Support, Criminal Investigation, (202) 622-7803.

**SUPPLEMENTARY INFORMATION:** The Internal Revenue Service's Criminal Investigation Division seeks to establish and maintain the proposed new system of records as a more comprehensive means of performing its responsibilities.

Criminal Investigation carries out many law enforcement related functions. Among Criminal Investigation's principal responsibilities are investigating and referring for prosecution criminal cases, centering largely on violations of tax laws,

including income tax evasion, refund fraud, and other crimes contributing to the federal tax gap. Criminal Investigation also investigates violations of certain money laundering laws.

Many of these law enforcement related functions have been automated and are available on Criminal Investigation computer systems. To ensure the integrity of the system data, audit records are maintained to identify all events that occur while users access or attempt to access the computer system.

The returns and returns information contained within this system constitute investigatory material compiled for law enforcement purposes under Title 26 of the United States Code.

Pursuant to the Privacy Act of 1974, the Department of the Treasury is publishing separately the notice of a new system of records, to be maintained by the Internal Revenue Service.

Under 5 U.S.C. 552a(j)(2) and (k)(2), the head of an 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 contains investigatory material compiled for law enforcement purposes. The Criminal Investigation Audit Trail Records System—Treasury/IRS 46.051 contains information relating to investigatory material compiled for law enforcement purposes pursuant to 26 U.S.C. 7213, 7213A and 18 U.S.C. 1030(a)(2)(B). Such investigatory material includes: identities of individuals under investigation, identities of potential witnesses, and identities of investigating agents.

The exemptions under 5 U.S.C. 552a(j)(2) and (k)(2), relating to investigatory material are hereby claimed for this system. The Department of the Treasury is hereby giving notice of a proposed rule to exempt this system of records described above from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and authority of 31 CFR 1.23(c). The reasons for exempting this system of records from certain provisions of 5 U.S.C. 552a are set forth below:

(1) 5 U.S.C. 552a(c)(3). This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at the individual's request. The reasons for exempting the system of records from the foregoing provision are as follows:

(i) The release of disclosure accounting would put the subject of an investigation on notice of the existence of an investigation and that such person is the subject of that investigation;

(ii) Such release of the disclosure accounting would provide the subject of an investigation with an accurate accounting of the date, nature, name and address of the person or agency to whom the disclosure was made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the altering or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating this person and the scope of the investigation, and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(c)(4), (d)(1), (2), (3), and (4), (e)(4)(G) and (H), (f) and (g). These provisions of the Privacy Act relate to an individual's right to notification of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the contents of the information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. The reasons for exempting the system of records from the foregoing provisions are as follows: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by such sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. In cases where an exemption from this provision has been claimed, the reasons are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures;

(ii) Revealing categories of sources of information could cause sources who

supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

(4) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each 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 reasons for exempting the system of records from the foregoing provision are as follows:

(i) The Internal Revenue Service will limit its inquiries to information which is necessary for the enforcement and administration of tax laws. However, an exemption from the foregoing provision is needed because, particularly in the early stages of an investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What appear relevant and necessary when collected may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance or necessity of such information can be established with certainty.

(iii) When information is received by the Internal Revenue Service relating to violations of law within the jurisdiction of other agencies, the Internal Revenue Service processes this information through Internal Revenue Service systems in order to forward the material to the appropriate agencies.

(5) 5 U.S.C. 552a(e)(2). This provision of the Privacy Act requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in an adverse determination about an individual's rights, benefits, and privileges under federal programs. The reasons for exempting the system of records from the foregoing provision are as follows:

(i) In certain instances the subject of a criminal investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's criminal activities must be obtained from other sources;

(ii) In a criminal investigation it is necessary to obtain evidence from a variety of sources, other than the subject of the investigation, in order to accumulate and verify the evidence necessary for the successful prosecution of persons suspected of violating criminal laws.

(6) 5 U.S.C. 552a(e)(3). This provision of the Privacy Act requires that an agency must inform the subject of an investigation who is asked to supply information of (A) the authority under which the information is sought and whether disclosure of the information is mandatory or voluntary, (B) the purposes for which the information is intended to be used, (C) the routine uses which may be made of the information, and (D) the effects on the subject, if any, of not providing the requested information. The reasons for exempting the system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of an investigation of the purposes for which the requested information is intended to be used would provide the subject with significant information concerning the nature of the investigation and could result in impeding or compromising the investigation.

(ii) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision could impede or compromise subsequent investigations.

(7) 5 U.S.C. 552a(e)(5). This provision of the Privacy Act requires an agency to maintain all records which are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. The reasons for exempting the system of records from the foregoing provision are as follows: Since the law defines "maintain" to include the collection of information, compliance with the foregoing provision would prohibit the initial collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering

information during the course of a criminal investigation, it is not always feasible or possible to determine completeness, accuracy, timeliness, or relevancy prior to collection of the information. Facts are first gathered and then placed into a cohesive order which objectively proves or disproves criminal behavior on the part of a suspect. Seemingly irrelevant, untimely, or incomplete information when gathered may acquire new significance as an investigation progresses. The restrictions of the foregoing provision could impede investigators in the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8). This provision of the Privacy Act requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The reasons for exempting the system of records from the foregoing provision are as follows: The notice requirement of the foregoing provision could prematurely reveal the existence of criminal investigations to individuals who are the subjects of such investigations.

The Department of the Treasury has determined that this proposed rule is not a "significant regulatory action" under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, for the reasons set forth above, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities.

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 proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

#### List of Subjects in 31 CFR Part 1

Privacy.

Part 1 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 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552a as amended. Subpart C also issued under 5 U.S.C. 552a.

#### § 1.36 [Amended]

2. Section 1.36 of Subpart C is amended by adding the following text in numerical order to the table in paragraphs (a)(1) and (b)(1) under the heading THE INTERNAL REVENUE SERVICE

| * * * * *                             |             |  |  |        |
|---------------------------------------|-------------|--|--|--------|
| (a) * * *                             |             |  |  |        |
| (1) * * *                             |             |  |  |        |
| Name of system                        |             |  |  | No.    |
| * * * * *                             |             |  |  |        |
| Criminal Investigation Records System | Audit Trail |  |  | 46.051 |
| * * * * *                             |             |  |  |        |

| * * * * *                             |             |  |  |        |
|---------------------------------------|-------------|--|--|--------|
| (b) * * *                             |             |  |  |        |
| (1) * * *                             |             |  |  |        |
| Name of system                        |             |  |  | No.    |
| * * * * *                             |             |  |  |        |
| Criminal Investigation Records System | Audit Trail |  |  | 46.051 |
| * * * * *                             |             |  |  |        |

Dated: March 7, 2000.

**Shelia Y. McCann,**

*Deputy Assistant Secretary (Administration).*  
[FR Doc. 00–9869 Filed 4–19–00; 8:45 am]

**BILLING CODE 4830–01–P**