

set-aside, has been allocated in 2003. Under paragraph (i)(3) of this section, State M qualifies for the 2004 National Pool.

(iii) *If three-month rule not used.* If Agency A treats all of the \$40 of previously allocated credit as returned in calendar year 2003, the State housing credit ceiling for the 2003 calendar year will be \$210 of which \$50 will be attributable to the returned credit component (\$10 + \$40 = \$50). Because credit amounts allocated to a qualified nonprofit organization in a prior calendar year that are returned in a subsequent calendar year do not retain their nonprofit character, the nonprofit set-aside for calendar year 2003 is \$21 (10% of the \$210 State housing credit ceiling). The \$170 that Agency A allocated during 2003 is first treated as allocated from the unused carryforward component of the State housing credit ceiling. The \$170 of allocated credit exceeds the \$50 attributable to the unused carryforward component by \$120. Because the unused carryforward component is fully utilized no credit will be forfeited by State M to the 2004 National Pool. The remaining \$120 of allocated credit will next be treated as allocated from the \$160 in credit determined by aggregating the population, returned credit, and national pool components (\$110 + \$50 + \$0 = \$160). The \$40 of unallocated credit (which includes \$4 of unallocated credit from the \$21 nonprofit set-aside) remaining in State M's 2003 housing credit ceiling (\$160 - \$120 = \$40) represents the unused carryforward component of State M's 2004 housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

(l) *Effective dates*—(1) *In general.* Except as provided in paragraph (l)(2) of this section, the rules set forth in § 1.42-14 are applicable on January 1, 1994.

(2) *Community Renewal Tax Relief Act of 2000 changes.* Paragraphs (a), (b), (c), (e), (i)(2) and (k) of this section are applicable for housing credit dollar amounts allocated after January 6, 2004. However, paragraphs (a), (b), (c), (e), (i)(2) and (k) of this section may be applied by Agencies and taxpayers for housing credit dollar amounts allocated after December 31, 2000, and on or before January 6, 2004. Otherwise, subject to the applicable applicability dates of the corresponding statutory provisions, the rules that apply for housing credit dollar amounts allocated on or before January 6, 2004 are contained in this section in effect on and before January 6, 2004 (*see* 26 CFR part 1 revised as of April 1, 2003).

**Mark E. Matthews,**  
Deputy Commissioner for Services and Enforcement.

Approved: December 19, 2003.

**Pamela F. Olson,**  
Assistant Secretary of the Treasury.  
[FR Doc. 03-32219 Filed 12-31-03; 11:59 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[TD 9111]

RIN 1545-AY94

#### Definition of Agent for Certain Purposes

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the definition of agent for certain purposes. The final regulations clarify that the term agent in certain provisions of section 6103 of the Internal Revenue Code (Code) includes contractors.

**DATES:** *Effective Date:* These regulations are effective January 6, 2004.

*Applicability Date:* For dates of applicability, see §§ 301.6103(l)-1(b) and 301.6103(m)-1(b).

**FOR FURTHER INFORMATION CONTACT:** Helene R. Newsome, (202) 622-4570 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to 26 CFR part 301 under section 6103(l) and (m) of the Code. On February 1, 2002, the **Federal Register** published a notice of proposed rulemaking (REG-120135-01) regarding the definition of agent for certain purposes (67 FR 4938). No public comments or requests for hearing were received. The Treasury decision adopts the regulations as proposed.

Generally, returns and return information are confidential under section 6103 of the Code unless a specific statutory exception applies. In cases of non-tax-related disclosures, returns and return information generally may be disclosed only to officers and employees of Federal, state, and local government agencies, and not to contractors or agents of such agencies. In certain limited circumstances, however, Congress has permitted disclosures to "agents" of these agencies. *See* section 6103(l)(6)(B), (l)(12), (m)(2), (m)(4), (m)(5), (m)(7).

This document contains final regulations that clarify that the term *agent* in section 6103(l) and (m) includes contractors. Clarification that the term *agent* includes contractors is necessary for the purpose of bringing certain statutory grants of disclosure authority into alignment with the reality of many agencies' operations. Agencies

generally procure the services of third parties under public contracting laws, which do not necessarily incorporate common law concepts of *agent*. This clarification is also consistent with Congressional intent. For example, the Senate Finance Committee, in amending section 6103(m)(2), stated, "[a]gents are those who are engaged directly in performing or assisting in collection functions for the federal government, presumably, private collection agencies who have contracted with the government to collect claims \* \* \*." S. Rep. No. 97-378, at 15 (1982).

This clarification does not provide any new disclosure authority, nor does it authorize the disclosure of return information to contractors that Congress has not previously specifically authorized in the Code. With regard to protection of taxpayer data, agents/contractors are subject to safeguard requirements, redisclosure prohibitions, and civil and criminal penalties for unauthorized disclosures. Accordingly, the regulations do not have an impact on taxpayer privacy.

#### 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) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

#### Drafting Information

The principal author of these regulations is Helene R. Newsome, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

#### 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 adding entries in numerical order to read as follows:

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

Section 301.6103(l)–1 also issued under 26 U.S.C. 6103(q).

Section 301.6103(m)–1 also issued under 26 U.S.C. 6103(q). \* \* \*

■ Par. 2. Section 301.6103(l)–1 is added to read as follows:

### **§ 301.6103(l)–1 Disclosure of returns and return information for purposes other than tax administration.**

(a) *Definition.* For purposes of applying the provisions of section 6103(l) of the Internal Revenue Code, the term *agent* includes a contractor.

(b) *Effective date.* This section is applicable January 6, 2004.

■ Par. 3. Section 301.6103(m)–1 is added to read as follows:

### **§ 301.6103(m)–1 Disclosure of taxpayer identity information.**

(a) *Definition.* For purposes of applying the provisions of section 6103(m) of the Internal Revenue Code, the term *agent* includes a contractor.

(b) *Effective date.* This section is applicable January 6, 2004.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 16, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### 32 CFR Part 806b

[Air Force Instruction 37–132]

#### Privacy Act; Implementation

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force is revising a (j)(2) exemption to an existing exemption rule for the Privacy Act system of records notice F090 AF IG B, Inspector General Records. The (j)(2) exemption will increase the value of the system of records for law enforcement purposes.

**EFFECTIVE DATE:** March 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne Rollins at (703) 601–4043.

**SUPPLEMENTARY INFORMATION:** The proposed rule was previously published on January 11, 2002, at 67 FR 1423. No comments were received; therefore, the rule is being adopted as final.

#### **Executive Order 12866, “Regulatory Planning and Review”**

It has been determined 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, 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)**

It has been determined 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.

#### **Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been determined 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”**

It has been determined that 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”**

It has been determined that 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 806b**

Privacy.

■ Accordingly, 32 CFR part 806b is amended as follows:

#### **PART 806b—AIR FORCE PRIVACY ACT PROGRAM**

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

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

■ 2. Appendix C to section 806b is amended by adding paragraph a.(6) to read as follows:

#### **Appendix C to Part 806b—General and Specific Exemptions**

\* \* \* \* \*

a. \* \* \*

(6) *System identifier and name:* F090 AF IG B, Inspector General Records.

(i) *Exemption:* (A) Parts of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(B) Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the Air Force IG’s criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also,