

for purposes of determining the income attributable to that U.S. permanent establishment.

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Par. 12. Section 1.988-4 is amended as follows:

1. Paragraph (h) is redesignated as paragraph (i).

2. A new paragraph (h) is added. The addition and revision read as follows:

§ 1.988-4 Source of gain or loss realized on a section 988 transfer.

* * * * *

(h) *Exchange gain or loss from a global dealing operation.*

Notwithstanding the provisions of this section, exchange gain or loss derived by a participant in a global dealing operation, as defined in § 1.482-8(a)(2)(i), shall be sourced under the rules set forth in § 1.863-3(h).

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Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Proposed rule.

SUMMARY: The Defense Logistics Agency proposes to exempt a system of records identified as S500.60 CA, entitled 'DLA Complaint Program Records' from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received on or before May 5, 1998, to be considered by this agency.

ADDRESSES: Send comments to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

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

SUPPLEMENTARY INFORMATION: **Executive Order 12866.** It has been determined that this Privacy Act rule for the Department of Defense does not

constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes 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, and 44 U.S.C. Chapter 35.

This proposed rule would add an exempt Privacy Act system of records to the DLA inventory of systems of records. DLA operates a complaint system whereby individuals may report instances of suspected fraud, waste, or abuse; mismanagement; contract deviations, noncompliance, or improprieties; administrative misconduct; or adverse treatment under the complaint program. Allegations are investigated and appropriate corrections are instituted. The proposal to exempt the system reflects recognition that certain records in the system may be deemed to require protection from disclosure in order to protect confidential sources mentioned in the files and avoid compromising, impeding, or interfering with investigative and enforcement proceedings. The Director proposes to adopt these exemptions for the reasons provided.

List of Subjects in 32 CFR part 323

Privacy.

Accordingly, 32 CFR part 323 is proposed to be amended as follows:

PART 323—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM.

1. The authority citation for part 323 continues to read as follows:

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

2. Appendix H to Part 323 is proposed to be amended by adding paragraph e. as follows:

Appendix H to Part 323—DLA Exemption Rules.

* * * * *

e. *ID: S500.60 CA (Specific exemption).*

1. *System name:* DLA Complaint Program Records.

2. *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) 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.

3. *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5), subsections (c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

4. *Reasons:* (i) From subsection (c)(3) because to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act

would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: March 2, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

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POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Rate Matter

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend the standards for mail matter eligible to be sent at the Nonprofit Standard Mail rates. Specifically, mail matter that seeks or solicits membership dues payments may contain "promotional" material concerning membership benefits when certain criteria are met.

DATES: Comments must be received on or before April 6, 1998.

ADDRESSES: Written comments should be mailed or delivered to Manager, Business Mail Acceptance, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260-6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 6801 at the above address.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, 202-268-5188.

SUPPLEMENTARY INFORMATION: Nonprofit organizations authorized to mail at the Nonprofit Standard Mail rates often list "member benefits" when soliciting new members or renewals. The Postal Service has long held that references to benefits are "permissible," i.e., not considered solicitations under the statutory restrictions on matter eligible for the nonprofit rates, provided advertising, promotional, or application materials for such benefits are not included in the mailpiece.

The Postal Service position is based on 39 U.S.C. 3626(j)(2)(B), which is implemented in Domestic Mail Manual (DMM) E670.5.7b, and states that an authorized nonprofit organization's material is not disqualified from being mailed at the Nonprofit Standard Mail rates solely because that material contains, but is not primarily devoted to, references to and a response card or other instructions for making inquiries about services or benefits available from membership in the authorized organization, if advertising, promotional, or application materials for such services or benefits are not included. If advertising, promotional, or application materials are present in a mailpiece that announces the availability of membership services or benefits, the mailpiece is not eligible for the Nonprofit Standard Mail rates unless the provision of such services or benefits is "substantially related" to the exercise or performance by the organization of one or more of the purposes under which the organization qualified to mail at the Nonprofit Standard Mail rates or, if the benefit is for travel, insurance, or financial instruments such as credit cards which are subject to separate rules, other prescribed exceptions are met. See 39 U.S.C. 3626(j) and DMM E670.5.4.

The Postal Service considers descriptive information printed in conjunction with the generic name of a service or product constituting a membership benefit, to be promotional. For example, information such as "low cost," "no annual fee," or "5% interest

rate" to describe a credit card offered as a membership benefit would be considered promotional material (in the same manner as words such as "delicious," "nutritional," or "inexpensive" would be considered promotional if used to describe food products) which may make the mailpiece ineligible for the Nonprofit Standard Mail rates. Purchase terms and conditions, and brand names are also considered promotional.

On November 14, 1997, the Postal Service published a final rule in the **Federal Register** allowing solicitations for contributions or membership dues payments that offer "backend premiums" not to be considered advertising for the premium(s) when certain criteria are met (See 62 FR 61014-61015 (November 14, 1997)). In doing so, the Postal Service determined to consider the solicitation as a single transaction, and considered whether it was predominantly a request for contributions or dues payments. The Postal Service believes it appropriate to adopt a similar approach with respect to the announcements of benefits available to members. Nevertheless, the Postal Service is mindful of section 39 U.S.C. 3626(j)(2)(B), which prohibits the inclusion of advertising, promotional, or application materials in conjunction with these advertisements.

The Postal Service proposes an amendment to Domestic Mail Manual E670.5.7b., to provide that a solicitation for new members or renewal of membership may, to a minor extent, describe membership benefits with the use of promotional terms provided it can be determined by an actual measurement that the piece is primarily a solicitation for new members or a renewal offer. For purposes of this exception, minor is defined as less than half. Measurement would be performed in accordance with the same standards for measuring advertising and nonadvertising in a Periodicals publication. See DMM P200.1.7. This change, which will affect mailings made after the date any rule change is adopted and not retroactively to previous mailings, only applies to the solicitation letter itself, and not to any brochures, circulars, flyers, or other separate, distinct, or independent documents. Any advertising, promotional, or application materials in these latter documents may cause the mailpiece to be ineligible for the nonprofit rates. The proposal does establish a limited exception for an organization which prepares a standard, preprinted document, consisting of a single sheet, that lists and describes its member benefits. This document may be