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Dated: May 24, 2007.

**Bernadette Dunham,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. E7-10771 Filed 6-4-07; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF STATE

### 22 CFR Part 9

[Public Notice 5822]

RIN 1400-AB91

### National Security Information Regulations

**AGENCY:** State Department.

**ACTION:** Final rule.

**SUMMARY:** This rule makes final the Department's proposed rule published on January 3, 2007. The rule revises the Department's regulations governing the classification and declassification of national security information that is under the control of the Department in order to reflect changes in the provisions of a new executive order on national security information and consequent changes in the Department's procedures since the last revision of the Department's regulations on this subject. The Department received one non-substantive comment and proposes no changes to the proposed rule. The proposed rule is therefore adopted as final.

**DATES:** *Effective Date:* This rule is effective June 5, 2007.

**ADDRESSES:** Persons having questions with respect to these regulations should address such questions to: Margaret P. Grafeld, Director, Office of Information Programs and Services, U.S. Department of State, SA-2, 515 22nd St., NW., Washington, DC 20522-6001. *Tel:* 202-261-8300; *FAX:* 202-261-8590. Persons with access to the Internet may also view this notice by going to the *regulations.gov* Web site at <http://www.regulations.gov/index.cfm>.

**FOR FURTHER INFORMATION CONTACT:** Margaret P. Grafeld, Director, Office of Information Programs and Services, U.S. Department of State, SA-2, 515 22nd St., NW., Washington, DC 20522-6001. *Tel:* 202-261-8300; *FAX:* 202-261-8590.

**SUPPLEMENTARY INFORMATION:** The Department's proposed rule was published as Public Notice 5658 at 72 FR 59-62 on January 3, 2007, with a 90-day public comment period. The Department received one non-substantive comment discussed under Analysis of Comments. Since the last comprehensive revision of the Department's national security information regulations, a new governing executive order, E.O. 12958, has been issued and modified several times, most substantially by E.O. 13292 of March 25, 2003. In addition, the Information Security Oversight Office has issued a new classified national security information directive containing interpretive guidance. Both the order and the directive effected significant changes in the procedures for classifying and declassifying national security information. The final regulations of the Department take account of these changes and reflect changes in the Department's procedures designed to implement them.

*Analysis of Comments:* The proposed rule was published for comments on January 3, 2007. The comment period closed April 3, 2007. The one public comment received by the Department related to the language in Sec. 9.2 pertaining to the objective of the classification program. The comment suggested the inclusion in Sec. 9.2 of additional language from the preamble of E.O. 12958. The Department concluded that such additional elaboration of program objective was duplicative of the order and unnecessary.

### Regulatory Findings

*Administrative Procedure Act.* The Department is publishing this regulation as a final rule, after it was published as a proposed rule on January 3, 2007.

*Regulatory Flexibility Act.* The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that this rule will not have significant economic impact on a substantial number of small entities.

*Unfunded Mandates Act of 1995.* This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely

affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996.* This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

*Executive Order 12866.* The Department does not consider this rule to be a "significant regulatory action" under Executive Order (E.O.) 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

*Executive Order 12988—Civil Justice Reform.* The Department has reviewed this regulation in light of sections 3(a) and 3(b) (2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Orders 12372 and 13132.* This regulation will 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

*National Environmental Policy Act.* The Department has analyzed this regulation for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that it will not have any effect on the quality of the environment.

*Paperwork Reduction Act.* This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

#### List of Subjects in 22 CFR Part 9

Original classification, Original classification authorities, Derivative classification, Classification challenges, Declassification and downgrading, Mandatory declassification review, Systematic declassification review, Safeguarding.

■ For the reasons set forth in the preamble, Title 22, Part 9 of the Code of Federal Regulations is revised to read as follows:

### PART 9—SECURITY INFORMATION REGULATIONS

Sec.

- 9.1 Basis.
- 9.2 Objective.
- 9.3 Senior agency official.
- 9.4 Original classification.
- 9.5 Original classification authority.
- 9.6 Derivative classification.
- 9.7 Identification and marking.
- 9.8 Classification challenges.
- 9.9 Declassification and downgrading.
- 9.10 Mandatory declassification review.
- 9.11 Systematic declassification review.
- 9.12 Access to classified information by historical researchers and certain former government personnel.
- 9.13 Safeguarding.

**Authority:** E.O. 12958 (60 FR 19825, April 20, 1995) as amended; Information Security Oversight Office Directive No. 1, 32 CFR 2001 (68 FR 55168, Sept. 22, 2003).

#### § 9.1 Basis.

These regulations, taken together with the Information Security Oversight Office Directive No. 1 dated September 22, 2003, and Volume 5 of the Department's Foreign Affairs Manual, provide the basis for the security classification program of the U.S. Department of State ("the Department") implementing Executive Order 12958, "Classified National Security Information", as amended ("the Executive Order").

#### § 9.2 Objective.

The objective of the Department's classification program is to ensure that national security information is protected from unauthorized disclosure, but only to the extent and for such a period as is necessary.

#### § 9.3 Senior agency official.

The Executive Order requires that each agency that originates or handles classified information designate a senior agency official to direct and administer its information security program. The

Department's senior agency official is the Under Secretary of State for Management. The senior agency official is assisted in carrying out the provisions of the Executive Order and the Department's information security program by the Assistant Secretary for Diplomatic Security, the Assistant Secretary for Administration, and the Deputy Assistant Secretary for Information Sharing Services.

#### § 9.4 Original classification.

(a) *Definition.* Original classification is the initial determination that certain information requires protection against unauthorized disclosure in the interest of national security (*i.e.*, national defense or foreign relations of the United States), together with a designation of the level of classification.

(b) *Classification levels.* (1) *Top Secret* shall be applied to information the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(2) *Secret* shall be applied to information the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(3) *Confidential* shall be applied to information the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(c) *Classification requirements and limitations.* (1) Information may not be considered for classification unless it concerns:

- (i) Military plans, weapons systems, or operations;
- (ii) Foreign government information;
- (iii) Intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (iv) Foreign relations or foreign activities of the United States, including confidential sources;
- (v) Scientific, technological, or economic matters relating to the national security; which includes defense against transnational terrorism;
- (vi) United States Government programs for safeguarding nuclear materials or facilities;
- (vii) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or
- (viii) Weapons of mass destruction.

(2) In classifying information, the public's interest in access to government

information must be balanced against the need to protect national security information.

(3) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization, or agency, to restrain competition, or to prevent or delay the release of information that does not require protection in the interest of the national security.

(4) A reference to classified documents that does not directly or indirectly disclose classified information may not be classified or used as a basis for classification.

(5) Only information owned by, produced by or for, or under the control of the U.S. Government may be classified.

(6) The unauthorized disclosure of foreign government information is presumed to cause damage to national security.

(d) *Duration of classification.* (1) Information shall be classified for as long as is required by national security considerations, subject to the limitations set forth in section 1.5 of the Executive Order. When it can be determined, a specific date or event for declassification in less than 10 years shall be set by the original classification authority at the time the information is originally classified. If a specific date or event for declassification cannot be determined, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority determines that the sensitivity of the information requires that it shall be marked for declassification for up to 25 years.

(2) An original classification authority may extend the duration of classification, change the level of classification, or reclassify specific information only when the standards and procedures for classifying information under the Executive Order are met.

(3) Information marked for an indefinite duration of classification under predecessor orders, such as "Originating Agency's Determination Required" (OADR) or containing no declassification instructions shall be subject to the declassification provisions of Part 3 of the Order, including the provisions of section 3.3 regarding automatic declassification of records older than 25 years.

#### § 9.5 Original classification authority.

(a) Authority for original classification of information as *Top Secret* may be exercised by the Secretary and those

officials delegated this authority in writing by the Secretary. Such authority has been delegated to the Deputy Secretary, the Under Secretaries, Assistant Secretaries and other Executive Level IV officials and their deputies; Chiefs of Mission, Charge d'Affaires, and Principal Officers at autonomous posts abroad; and to other officers within the Department as set forth in Department Notice dated May 26, 2000.

(b) Authority for original classification of information as *Secret* or *Confidential* may be exercised only by the Secretary, the Senior Agency Official, and those officials delegated this authority in writing by the Secretary or the Senior Agency Official. Such authority has been delegated to Office Directors and Division Chiefs in the Department, Section Heads in Embassies and Consulates abroad, and other officers within the Department as set forth in Department Notice dated May 26, 2000. In the absence of the Secret or Confidential classification authority, the person designated to act for that official may exercise that authority.

#### § 9.6 Derivative classification.

(a) *Definition.* Derivative classification is the incorporating, paraphrasing, restating or generating in new form information that is already classified and the marking of the new material consistent with the classification of the source material. Duplication or reproduction of existing classified information is not derivative classification.

(b) *Responsibility.* Information classified derivatively from other classified information shall be classified and marked in accordance with instructions from an authorized classifier or in accordance with an authorized classification guide and shall comply with the standards set forth in sections 2.1–2.2 of the Executive Order and the ISOO implementing directives in 32 CFR 2001.22.

(c) *Department of State Classification Guide.* The Department of State Classification Guide (DSCG) is the primary authority for the classification of information in documents created by Department of State personnel. The Guide is classified "Confidential" and is found on the Department of State's classified Web site.

#### § 9.7 Identification and marking.

(a) Classified information shall be marked pursuant to the standards set forth in section 1.6 of the Executive Order; ISOO implementing directives in 32 CFR 2001, Subpart B; and internal

Department guidance in 12 Foreign Affairs Manual (FAM).

(b) Foreign government information shall retain its original classification markings or be marked and classified at a U.S. classification level that provides a degree of protection at least equivalent to that required by the entity that furnished the information. Foreign government information retaining its original classification markings need not be assigned a U.S. classification marking provided the responsible agency determines that the foreign government markings are adequate to meet the purposes served by U.S. classification markings.

(c) Information assigned a level of classification under predecessor executive orders shall be considered as classified at that level of classification.

#### § 9.8 Classification challenges.

(a) *Challenges.* Holders of information pertaining to the Department of State who believe that its classification status is improper are expected and encouraged to challenge the classification status of the information. Holders of information making challenges to the classification status of information shall not be subject to retribution for such action. Informal, usually oral, challenges are encouraged. Formal challenges to classification actions shall be in writing to an original classification authority (OCA) with jurisdiction over the information and a copy of the challenge shall be sent to the Office of Information Programs and Services (IPS) of the Department of State, SA–2, 515 22nd St. NW., Washington, DC 20522–6001. The Department (either the OCA or IPS) shall provide an initial response in writing within 60 days.

(b) *Appeal procedures and time limits.* A negative response may be appealed to the Department's Appeals Review Panel (ARP) and should be sent to: Chairman, Appeals Review Panel, c/o Information and Privacy Coordinator/ Appeals Officer, at the IPS address given above. The appeal shall include a copy of the original challenge, the response, and any additional information the appellant believes would assist the ARP in reaching its decision. The ARP shall respond within 90 days of receipt of the appeal. A negative decision by the ARP may be appealed to the Interagency Security Classification Appeals Panel (ISCAP) referenced in section 5.3 of Executive Order 12958. If the Department fails to respond to a formal challenge within 120 days or if the ARP fails to respond to an appeal within 90 days, the challenge may be sent to the ISCAP.

#### § 9.9 Declassification and downgrading.

(a) *Declassification processes.* Declassification of classified information may occur:

(1) After review of material in response to a Freedom of Information Act (FOIA) request, mandatory declassification review request, discovery request, subpoena, classification challenge, or other information access or declassification request;

(2) After review as part of the Department's systematic declassification review program;

(3) As a result of the elapse of the time or the occurrence of the event specified at the time of classification;

(4) By operation of the automatic declassification provisions of section 3.3 of the Executive Order with respect to material more than 25 years old.

(b) *Downgrading.* When material classified at the Top Secret level is reviewed for declassification and it is determined that classification continues to be warranted, a determination shall be made whether downgrading to a lower level of classification is appropriate. If downgrading is determined to be warranted, the classification level of the material shall be changed to the appropriate lower level.

(c) *Authority to downgrade and declassify.* (1) Classified information may be downgraded or declassified by the official who originally classified the information if that official is still serving in the same position, by a successor in that capacity, by a supervisory official of either, or by any other official specifically designated by the Secretary or the senior agency official.

(2) The Department shall maintain a record of Department officials specifically designated as declassification and downgrading authorities.

(d) *Declassification in the public interest.* Although information that continues to meet the classification criteria of the Executive Order or a predecessor order normally requires continued protection, in some exceptional cases the need to protect information may be outweighed by the public interest in disclosure of the information. When such a question arises, it shall be referred to the Secretary or the Senior Agency Official for decision on whether, as an exercise of discretion, the information should be declassified and disclosed. This provision does not amplify or modify the substantive criteria or procedures for classification or create any substantive or procedural right subject to judicial review.

(e) *Public dissemination of declassified information.*

Declassification of information is not authorization for its public disclosure. Previously classified information that is declassified may be subject to withholding from public disclosure under the FOIA, the Privacy Act, and various statutory confidentiality provisions.

**§ 9.10 Mandatory declassification review.**

All requests to the Department by a member of the public, a government employee, or an agency to declassify and release information shall result in a prompt declassification review of the information in accordance with procedures set forth in 22 CFR 171.20–25. Mandatory declassification review requests should be directed to the Information and Privacy Coordinator, U.S. Department of State, SA–2, 515 22nd St., NW., Washington, DC 20522–6001.

**§ 9.11 Systematic declassification review.**

The Information and Privacy Coordinator shall be responsible for conducting a program for systematic declassification review of historically valuable records that were exempted from the automatic declassification provisions of section 3.3 of the Executive Order. The Information and Privacy Coordinator shall prioritize such review on the basis of researcher interest and the likelihood of declassification upon review.

**§ 9.12 Access to classified information by historical researchers and certain former government personnel.**

For Department procedures regarding the access to classified information by historical researchers and certain former government personnel, see Sec. 171.24 of this Title.

**§ 9.13 Safeguarding.**

Specific controls on the use, processing, storage, reproduction, and transmittal of classified information within the Department to provide protection for such information and to prevent access by unauthorized persons are contained in Volume 12 of the Department's Foreign Affairs Manual.

Dated: May 25, 2007.

**Lee Lohman,**

*Deputy Assistant Secretary, Department of State.*

[FR Doc. E7–10778 Filed 6–4–07; 8:45 am]

**BILLING CODE 4710–24–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9324]

RIN 1545–BF04

**Designated Roth Accounts Under Section 402A; Correction**

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

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to final regulations (TD 9324) that were published in the **Federal Register** on Monday, April 30, 2007 (72 FR 21103) providing guidance concerning the taxation of distributions from designated Roth accounts under qualified cash or deferred arrangements under section 401(k).

**DATES:** The correction is effective June 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** R. Lisa Mojiri-Azad or William D. Gibbs at 202–622–6060, or Cathy A. Vohs, 202–622–6090 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of this correction are under sections 401(k), 402(g), 402A, and 408A of the Internal Revenue Code.

**Need for Correction**

As published, final regulations (TD 9324) contain errors that may prove to be misleading and are in need of clarification.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.402A–1 is amended by revising the first sentence of *Example.* of A–8.(b) to read as follows:

**§ 1.402A–1 Designated Roth Accounts.**

\* \* \* \* \*

A–8. \* \* \*

(b) \* \* \*

*Example.* The facts are the same as in the *Example* in A–7 of this section, except that

instead of being disabled, Employee C is receiving a hardship distribution. \* \* \*

■ **Par. 3.** Section 1.402A–2 is amended by revising paragraph (2) of A–2.(a) to read as follows:

**§ 1.402A–2 Reporting and recordkeeping requirements with respect to designated Roth accounts.**

\* \* \* \* \*

A–2. \* \* \*

(a) \* \* \*

(2) If the distribution is not a direct rollover to a designated Roth account under another plan, the plan administrator or responsible party must provide to the employee, upon request, the same information described in paragraph (a)(1) of this A–2, except the statement need not indicate the first year of the 5-taxable-year period described in A–1 of this section.

\* \* \* \* \*

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E7–10802 Filed 6–4–07; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

[TD 9327]

RIN 1545–BC92

**Disclosure of Returns and Return Information in Connection With Written Contracts or Agreements for the Acquisition of Property or Services for Tax Administration Purposes**

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the disclosure of returns and return information pursuant to section 6103(n) of the Internal Revenue Code (Code). The final regulations describe the circumstances under which officers or employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, may disclose returns and return information to obtain property or services for tax administration purposes, pursuant to a written contract or agreement. The final regulations also set forth safeguard requirements that are designed to protect the confidentiality of returns and return information in the