

the employee that would be includible in the gross income of the employee but for the rules of sections 125, 132(f)(4), 402(e)(2), 402(h)(1)(B), 402(k), or 457(b).

■ **Par. 3.** Section 1.403(b)–3 is amended by revising paragraph (b)(3)(i), last sentence, paragraph (c)(2), last sentence, and paragraph (d)(1)(ii), last sentence, to read as follows:

§ 1.403–3 Exclusion for contributions to purchase section 403(b) contracts.

(b) * * *

(3) * * *

(i) * * * However, if a plan contains any optional provisions, the optional provisions must meet, in both form and operation, the relevant requirements under section 403(b), this section, and §§ 1.403(b)–4 through 1.403(b)–11.

(c) * * *

(2) * * * Similarly, a designated Roth account under a section 403(b) plan is subject to the rules of sections 401(a)(9)(A) and (B) and § 1.403(b)–6(e).

(d) * * *

(1) * * *

(ii) * * * However, any failure that is not an operational failure adversely affects all contracts issued under the plan, including: a failure to have contracts issued pursuant to a written defined contribution plan which, in form, satisfies the requirements of § 1.403(b)–1, § 1.403(b)–2, this section, and §§ 1.403(b)–4 through 1.403(b)–11 (a written plan failure); a nondiscrimination failure; or an employer eligibility failure.

■ **Par. 4.** Section 1.403(b)–4 is amended by revising paragraph (b)(1), third sentence, paragraph (c)(3)(i)(B)(2), and paragraph (e)(7), second sentence, to read as follows:

§ 1.403(b)–4 Contribution limitations.

(b) * * *

(1) * * * For purposes of section 415, contributions made for a participant are aggregated to the extent applicable under sections 414(b), (c), (m), (n), and (o).

(c) * * *

(3) * * *

(i) * * *

(B) * * *

(2) The total elective deferrals described in section 402(g)(7)(A)(ii) made for the qualified employee by the qualified organization for prior years; or

(e) * * *

(7) * * * In such a case, there is first taken into account his or her service during the annual work period for which the last year of service's includible compensation is being determined; then there is taken into account his or her service during his or her next preceding annual work period based on whole months; and so forth until the employee's service equals, in the aggregate, one year of service.

■ **Par. 5.** Section 1.403(b)–6 is amended by revising paragraph (e)(3) and paragraph (e)(5), last sentence, to read as follows:

§ 1.403(b)–6 Timing of distributions and benefits.

(e) * * *

(3) * * * The required beginning date for purposes of section 403(b)(10) is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires from employment with the employer maintaining the plan. However, for any section 403(b) contract that is not part of a governmental plan or church plan, the required beginning date for a 5-percent owner is April 1 of the calendar year following the calendar year in which the employee attains age 70½.

(5) * * * See also § 1.403(b)–9(a)(5) for additional rules relating to annuities payable from a retirement income account).

■ **Par. 6.** Section 1.403(b)–11 is amended by revising paragraph (c)(2) to read as follows:

§ 1.403(b)–11 Applicable dates.

(c) * * *

(2) In the case of a loan or other extension of credit to the employer that was entered into under a retirement income account before July 26, 2007, the plan does not fail to satisfy § 1.403(b)–9(a)(2)(i)(C) on account of the loan or other extension of credit if the plan takes reasonable steps to eliminate the loan or other extension of credit to the employer before the applicable date for § 1.403(b)–9(a)(2) or as promptly as practical thereafter (including taking steps after July 26, 2007 and before the applicable date).

■ **Par. 7.** Section 1.414(c)–5 is amended by revising paragraph (g) *Example 3.(i)*, first sentence, to read as follows:

§ 1.414(c)–5 Certain tax-exempt organizations.

(g) * * *

Example 3. * * *

(i) * * * Organizations O and P are each tax-exempt organizations under section 501(c)(3).

LaNita Van Dyke,

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

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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

Privacy Act; Implementation

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the Internal Revenue Service published a notice of proposed rulemaking on November 28, 2005 to remove the exemption claimed for the system of records Treasury/IRS 34.022, pursuant to 5 U.S.C. 552a(j)(2) and in its place claim an exemption pursuant to 5 U.S.C. 552a(k)(5).

EFFECTIVE DATE: September 25, 2007.

FOR FURTHER INFORMATION CONTACT: Written inquiries as they relate to this system should be directed to Mary Anderson, IRS, Personnel Security and Investigations, 5205 Leesburg Pike, Suite 510, Falls Church, VA 22041–3802.

SUPPLEMENTARY INFORMATION: The Internal Revenue Service published a notice of proposed rulemaking on November 28, 2005, at 70 FR 71245, to remove the (j)(2) exemption and in its place claim the exemption pursuant to 5 U.S.C. 552a(k)(5) exemption. No comments were received by the IRS.

The records in this system are no longer compiled for law enforcement purposes and do not qualify for the (j)(2) exemption. The (k)(5) exemption is more appropriate because the investigatory material contained in this system of records is collected and maintained solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information.

The (j)(2) exemption was initially applied to this system which was the database used for all Inspection (now the Treasury Inspector General for Tax Administration [TIGTA]) investigations. TIGTA is not a part of IRS and no Inspection investigations are maintained in this system, with the exception of personnel security investigations. Under 5 U.S.C. 552a(k)(5), the head of any 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 is 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. This is applicable only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act.

The sections of 5 U.S.C. 552a from which the systems of records are exempt include in general those providing for individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of the Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the systems should be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency 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 Department believes that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

A separate notice revising the system of records entitled "IRS 34.022—National Background Investigations Center Management Information System" was published in the **Federal**

Register on November 28, 2005, at 70 FR 71376. Among other changes, the name of the system of records was changed to "Automated Background Investigations System (ABIS)."

As required by Executive Order 12866, it has been determined that this final rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

■ Part 1 subpart C of Title 31 of the Code of Federal Regulations amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301, 31 U.S.C. 321, subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.36 of subpart C is amended as follows:

■ a. Paragraph (c)(1)(viii) is amended by removing "IRS 34.022—National Background Investigations Center Management Information System" from the table.

■ b. Paragraph (m)(1)(viii) is amended by adding the following text to the table in numerical order:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

(m)	*	*	*	*
(1)	*	*	*	*
(viii)	*	*	*	*

Number	Name of system
IRS 34.022	Automated Background Investigations System (ABIS)

Dated: September 18, 2007.

Peter B. McCarthy,

Assistant Secretary for Management and Chief Financial Officer.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD–2007–HA–0026]

RIN 0720–AB14

TRICARE; Changes Included in the John Warner National Defense Authorization Act for Fiscal Year 2007; Authorization of Anesthesia and Other Costs for Dental Care for Children and Certain Other Patients

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule implements section 702 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364. The rule provides coverage of contracted medical care with respect to dental care beyond that care required as a necessary adjunct to medical or surgical treatment. The entitlement of institutional and anesthesia services is authorized in conjunction with non-covered dental treatment for patients with developmental, mental, or physical disabilities or for pediatric patients age 5 or under. This final rule does not eliminate any contracted medical care that is currently covered for spouses and children. The entitlement of anesthesia services includes general anesthesia services only. Institutional services include institutional benefits associated with both hospital and in-out surgery settings. Patients with developmental, mental, or physical disabilities are those patients with conditions that prohibit dental treatment in a safe and effective manner. Therefore, it is medically or psychologically necessary for these patients to require general anesthesia for dental treatment.