applies, such deemed section 351 exchange is not an acquisition subject to section 367(b). * * *

* * * * *

■ **Par. 4.** In § 1.367(b)–6, paragraph (a)(1) is amended by adding a sentence to the end to read as follows:

§ 1.367(b)–6 Effective dates and coordination rule

(a) *Effective date*—(1) *In general.* * * * The second sentence of paragraph (a) in § 1.367(b)–4 shall apply to section 304(a)(1) transactions occurring on or after February 21, 2006; however, taxpayers may rely on this sentence for all section 304(a)(1) transactions occurring in open tax years.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 8, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 06–1465 Filed 2–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 004–2006]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Bureau of Prisons (Bureau or BOP), is exempting a Privacy Act system of records from the following subsections of the Privacy Act: (c)(3) and (4), (d)(1)–(4), (e)(2) and (3), (e)(5), and (g). This system of records is the ''Inmate Electronic Message Record System, (JUSTICE/BOP–013).''

The exemptions are necessary to preclude the compromise of institution security, to better ensure the safety of inmates, Bureau personnel and the public, to better protect third party privacy, to protect law enforcement and investigatory information, and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

DATES: This final rule is effective February 21, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: On November 16, 2005 (70 FR 69487), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This rule relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

■ 2. Section 16.97 is amended by adding paragraphs (p) and (q) to read as follows:

§ 16.97 Exemption of Bureau of Prisons Systems—limited access.

* * * * *

(p) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4), (d)(1)–(4), (e)(2) and (3), (e)(5), and (g):

Inmate Electronic Message Record System (JUSTICE /BOP–013).

(q) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and/or (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, the applicable exemption may be waived, either partially or totally, by the BOP. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) to the extent that this system of records is exempt from subsection (d), and for such reasons as those cited for subsection (d) in paragraph (q)(3) below.

(2) From subsection (c)(4) to the extent that exemption from subsection (d) makes this exemption inapplicable.

(3) From the access provisions of subsection (d) because exemption from this subsection is essential to prevent access of information by record subjects that may invade third party privacy; frustrate the investigative process; jeopardize the legitimate correctional interests of safety, security and good order to prison facilities; or otherwise compromise, impede, or interfere with BOP or other law enforcement agency activities.

(4) From the amendment provisions of subsection (d) because amendment of the records may interfere with law enforcement operations and would impose an impossible administrative burden by requiring that, in addition to efforts to ensure accuracy so as to withstand possible judicial scrutiny, it would require that law enforcement information be continuously reexamined, even where the information may have been collected from the record subject. Also, some of these records come from other Federal criminal justice agencies or State, local and foreign jurisdictions, or from Federal and State probation and judicial offices, and it is administratively impossible to ensure that records comply with this provision.

(5) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely solely upon information furnished by the individual concerning his/her own activities since it may result in inaccurate information and compromise ongoing criminal investigations or correctional management decisions.

(6) From subsection (e)(3) because in view of BOP's operational responsibilities, application of this provision to the collection of information is inappropriate. Application of this provision could provide the subject with substantial information which may in fact impede the information gathering process or compromise ongoing criminal investigations or correctional management decisions.

(7) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Material which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance at a later date or as an investigation progresses. Also, some of these records may come from other Federal, State, local and foreign law

enforcement agencies, and from Federal and State probation and judicial offices and it is administratively impossible to ensure that the records comply with this provision. It would also require that law enforcement information be continuously reexamined even where the information may have been collected from the record subject.

(8) From subsection (g) to the extent that this system is exempted from other provisions of the Act.

Dated: February 13, 2006.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 06–1549 Filed 2–17–06; 8:45 am]

BILLING CODE 4410–05–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095–AB39

Records Management; Electronic Mail; Electronic Records; Disposition of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising our regulations to provide for the appropriate management and disposition of very short-term temporary e-mail, by allowing agencies to manage these records within the e-mail system.

DATES: This rule is effective March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Cheryl Stadel-Bevans at telephone number 301–837–3021 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2004, at 69 FR 63980, NARA published a proposed rule pertaining to the disposition of electronic mail records with short retention periods. In response, we received comments from nine Federal agencies and two public interest groups.

Discussion of Comments Received

Five of the Federal agencies concurred without further comment.

One Federal agency concurred and requested that we not limit the definition of short-term to 180 days or less, but extend it to up to 3 years. As this rule is meant to apply only to records of fleeting value, we will not amend the definition to include records retained beyond 180 days.

Another Federal agency concurred and asked that we provide a definitive cut-off for short-term. We accepted this recommendation and have set the cut-off at 180 days.

Two Federal agencies and both public interest groups disagreed with our proposed rule.

One Federal agency and one public interest group raised the concern that this regulatory change could unintentionally result in the destruction of important e-mail records with long-term or permanent value. The commenters did not dispute that, in a perfect world, this rule is both legally permissible and potentially harmless. Their concern was that, in the words of one commenter, this new rule will ''help foster the attitude that e-mail generally is a disposable, 'off-the-record' category of communication whose loss or destruction is of little concern to NARA or to the public.'' They pointed out, and NARA recognizes, that many agencies and their employees do not properly maintain all e-mail records for their prescribed retention period, such that valuable records are being lost prematurely. The solution, they believe, is that all Federal employees must be required to print and file or copy to an electronic recordkeeping system every e-mail record, to diminish the possibility that long-term records will be automatically deleted as transitory.

NARA fully agrees with these commenters' objective of wanting to improve the Government's retention of e-mail records for their full duration. However, based on long consideration and experience, NARA does not believe that the commenters' recommended solution will have that result. To require the creation of a record copy of all of these e-mail messages is not only extremely costly and burdensome, but may also be partly responsible for any current non-compliance with existing e-mail retention requirements: *i.e.*, the largely pointless exercise of expending significant time and effort to print and file hundreds of transitory e-mail messages every week may be a contributing factor to what leads many Government employees to forego printing any of their e-mail messages.

NARA has concluded that Government employees are more likely to take seriously their responsibility of retaining e-mail records of long-term or permanent value, either by printing and filing or by investing in electronic recordkeeping systems to retain a smaller percentage of e-mail records, if they do not have to spend time on the very high volume of transitory and very short-term e-mail records that cross their desktops every day. Accordingly, NARA believes that this regulation, as further modified, will serve to improve the Government's retention and preservation of important e-mail records.

NARA wishes to emphasize, however, that this regulatory change is intended to be narrowly construed, *i.e.*, the waiver of the requirement to print out or otherwise electronically save very short term e-mail records (with dispositions of 180 days or less) is to be limited to records covered under the categories listed in General Record Schedule (GRS) 23, Item 7, or in file series in agency schedules with similarly short term disposition periods. In other words, longer term temporary or permanent e-mail records on agency e-mail systems must still be printed out or saved electronically in accordance with current regulations. For the convenience of readers, the text of GRS 23, Item 7, is reproduced at the end of this Supplementary Information.

One Federal agency expressed concern that the proposed rule will place too much of a burden on Federal employees. Federal employees are currently responsible for maintaining these records. For the reasons given in the previous paragraphs, we believe that the new rule will ease the burden on Federal employees.

One Federal agency stated that both e-mail and paper records of a transitory nature should be treated the same. We agree, and that is the basis for our revisions. General Record Schedule 23, Item 7, applies to a variety of transitory records, regardless of the media on which they were created, including paper records and, with the recent changes, electronic records. Agency records schedules may include other transitory records, which now may be managed similarly in both paper and electronic form.

Two Federal agencies stated that the proposed rule will require a technology solution, such as a records management application (RMA). We disagree. This rule allows agencies to manage transitory e-mail messages within the e-mail system. It removes the requirement that transitory records be placed in a separate recordkeeping system (printed and filed or moved to an RMA). We believe that this rule allows greater flexibility. It reduces costs by not requiring that every e-mail message be printed and also reduces the amount of time spent filing.

We received one comment from a Federal agency asking why these records needed to be kept under a freeze if they are truly transitory. Federal agencies have an ongoing obligation to comply with legal demands such as