

section 1031(a). Moreover, assume that a principal purpose of the transfer of DA to B or of FA to Z is to avoid the application of the alternative depreciation system.

(ii) As in example 1, B has acquired property from Z, a related person; Z's gain is not recognized pursuant to section 1031(a); Z has received tax-exempt use property as part of the transaction; and a principal purpose of the transfer of DA to B or of FA to Z is to avoid the application of the alternative depreciation system. Thus, the transaction is within the scope of this section even though B has held tax-exempt use property for a period of time and, during that time, has used the alternative depreciation system with respect to such property. Pursuant to paragraph (b) of this section, B, which has a substituted basis determined pursuant to section 1031(d) of \$500,000 in DA, must depreciate the aircraft over the remaining recovery period of FA, using the same depreciation method and convention. Z holds tax-exempt use property with a basis of \$10,000, which must be depreciated under the alternative depreciation system.

(iii) Assume the same facts as in paragraph (i) of this example, except that B and Z are members of an affiliated group that files a consolidated federal income tax return. Of B's \$500,000 basis in DA, \$10,000 is subject to section 168(i)(7) and therefore not subject to this section. The remaining \$490,000 of basis is subject to this section.

(e) *Effective date.* This section applies to transfers made on or after April 20, 1995.

#### **§ 1.168(i)-2 Lease term.**

(a) *In general.* For purposes of section 168, a lease term is determined under all the facts and circumstances. Paragraph (b) of this section and § 1.168(j)-1T, Q&A 17, provide rules that apply to determine whether a period of time not included in the stated duration of an original lease (*additional period*) is included in the lease term, under certain circumstances. These rules do not prevent the inclusion of an additional period in the lease term in other circumstances.

(b) *Lessee retains financial obligation.* (1) An additional period of time during which a lessee may not continue to be the lessee will nevertheless be included in the lease term if the lessee (or a related person) has agreed that one or both of them will or could be obligated to make a payment of rent or a payment in the nature of rent with respect to such period.

(2) For the purposes of this paragraph (b), a payment in the nature of rent includes a payment intended to substitute for rent or to fund or supplement the rental payments of another. For example, a payment in the nature of rent includes a payment of any kind that is required to be made in the event that—

(i) The leased property is not leased for the additional period;

(ii) The leased property is leased for the additional period under terms that do not satisfy specified terms and conditions;

(iii) There is a failure to make a payment of rent with respect to such additional period; or

(iv) Circumstances similar to those described in paragraph (b)(2)(i), (ii), or (iii) occur.

(3) For the purposes of this paragraph (b), de minimis payments will be disregarded.

(c) *Related person.* For purposes of paragraph (b) of this section, a person is related to the lessee if such person is described in section 168(h)(4).

(d) *Changes in status.* Section 168(i)(5) (changes in status) applies if an additional period is included in a lease term under this section and the leased property ceases to be tax-exempt use property for such additional period.

(e) *Example.* The following example illustrates the application of this section. The example does not address common law doctrines or other authorities that may apply to cause an additional period to be included in the lease term or to recharacterize a lease as a conditional sale or otherwise for federal income tax purposes. Unless otherwise indicated, parties to the transactions are not related to one another.

*Example. Financial obligation with respect to an additional period.—(i) Facts.* X, a taxable corporation, and Y, a foreign airline whose income is not subject to United States taxation, enter into a lease agreement under which X agrees to lease an aircraft to Y for a period of 10 years. The lease agreement provides that, at the end of the lease period, Y is obligated to find a subsequent lessee (*replacement lessee*) to enter into a subsequent lease (*replacement lease*) of the aircraft from X for an additional 10-year period. The provisions of the lease agreement require that any replacement lessee be unrelated to Y and that it not be a tax-exempt entity as defined in section 168(h)(2). The provisions of the lease agreement also set forth the basic terms and conditions of the replacement lease, including its duration and the required rental payments. In the event Y fails to secure a replacement lease, the lease agreement requires Y to make a payment to X in an amount determined under the lease agreement.

(ii) *Application of this section.* The lease agreement between X and Y obligates Y to make a payment in the event the aircraft is not leased for the period commencing after the initial 10-year lease period and ending on the date the replacement lease is scheduled to end. Accordingly, pursuant to paragraph (b) of this section, the term of the lease between X and Y includes such additional period, and the lease term is 20 years for purposes of section 168.

(ii) *Facts modified.* Assume the same facts as in paragraph (i) of this example, except that Y is required to guarantee the payment of rentals under the 10-year replacement lease and to make a payment to X equal to the present value of any excess of the replacement lease rental payments specified in the lease agreement between X and Y, over the rental payments actually agreed to be paid by the replacement lessee. Pursuant to paragraph (b) of this section, the term of the lease between X and Y includes the additional period, and the lease term is 20 years for purposes of section 168.

(iv) *Changes in status.* If, upon the conclusion of the stated duration of the lease between X and Y, the aircraft either is returned to X or leased to a replacement lessee that is not a tax-exempt entity as defined in section 168(h)(2), the subsequent method of depreciation will be determined pursuant to section 168(i)(5).

(f) *Effective date.* This section applies to leases entered into on or after April 20, 1995.

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

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## **DEPARTMENT OF JUSTICE**

### **28 CFR Part 16**

[AAG/A Order No. 102-95]

#### **Exemption of Records System Under the Privacy Act**

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice, Bureau of Prisons (BOP), proposes to exempt a Privacy Act system of records from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(5) and (8), (f) and (g) of the Privacy Act, 5 U.S.C. 552a(j)(2) and (k)(2). This system of records is the BOP "Telephone Activity Record System (JUSTICE/BOP-011)." Information in this system relates to inmate telephone activity and may include information relating to official Federal investigations and matters of law enforcement of the BOP pursuant to 18 U.S.C. 2510 *et seq.*, 3621, 4003, 4042 and 4082. The exemptions are necessary to protect third party privacy and to avoid interference with law enforcement activities, e.g., to preclude the disclosure of investigative techniques, to prevent subjects of investigations from frustrating the investigative process, and to more effectively ensure the safety, security and good order of Federal correctional facilities.

**DATES:** Submit any comments by May 22, 1995.

**ADDRESSES:** Address all comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

**FOR FURTHER INFORMATION CONTACT:** Patricia E. Neely (202-616-0178).

**SUPPLEMENTARY INFORMATION:** In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "Telephone Activity Record System", JUSTICE/BOP-011."

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order 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 the Attorney General Order No. 793-78, it is proposed to amend 28 CFR part 16 as set forth below.

Dated: April 6, 1995.

**Stephen R. Colgate,**  
Assistant Attorney General for  
Administration.

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. It is proposed to amend 28 CFR 16.97 by adding and reserving paragraph (d) and adding paragraphs (e) and (f), to read as follows:

#### § 16.97 Exemption of Federal Bureau of Prisons (BOP) Systems—limited access.

\* \* \* \* \*

(d) [Reserved]

(e) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(2) and (3), (e)(5) and (8), (f) and (g):

Telephone Activity Record System (JUSTICE/BOP-011).

(f) 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 (f)(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 of prison facilities; or otherwise compromise, impede, or interfere with BOP or other law enforcement agency activities.

(4) From the amendment provisions from 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 the 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.

(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 an investigation.

(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 (e)(8) because the nature of BOP law enforcement activities renders impractical the notice of compliance with compulsory legal process. This requirement could present a serious impediment to law enforcement such as revealing investigative techniques or the existence of confidential investigations, jeopardize the security of third parties, or otherwise compromise law enforcement efforts.

(11) From subsections (f) and (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[FRL-5194-4]

### Ocean Dumping; Proposed Designation of Site

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to designate an ocean dredged material disposal site, the Humboldt Open Ocean Dredged Site (HOODS), located offshore of Humboldt Bay, California, for the disposal of suitable dredged material removed from the Humboldt Bay region and other nearby harbors or dredging sites. EPA has tentatively determined that the site selected in the Draft EIS as the preferred site will be the site designated as HOODS in this Proposed Rule. The proposed HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) west of the Humboldt Bay entrance and occupies an area of 1 square nautical mile (3 square