

Annual Federal Tax Program (Form 944) whose actual employment tax liability exceeds the eligibility threshold, as set forth in § 31.6011(a)–1T(a)(5)(ii) and § 31.6011(a)–4T(a)(4)(ii) will not qualify for this exception and should follow the deposit rules set forth in this section.

(6) *Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.* An employer who was in the Employers' Annual Federal Tax Program (Form 944) in the preceding year, but who is no longer qualified because its annual employment tax liability exceeded the eligibility threshold set forth in § 31.6011(a)–1T(a)(5)(ii) and § 31.6011(a)–4T(a)(4)(ii) in that preceding year, is required to deposit pursuant to § 31.6302–1. The employer will be deemed to have timely deposited its January deposit obligation(s) under § 31.6302–1(c)(1) through (4) for the first quarter of the year in which it must file quarterly using Form 941 if the employer deposits the amount of such deposit obligation(s) by March 15 of that year.

(d) *Examples 1 through 5* [Reserved]. For further guidance, see § 31.6302–1(d) *Examples 1 through 5*.

*Example 6. Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year satisfied.* F (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. F filed Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of \$3,000. Because F's annual employment tax liability for the 2006 taxable year exceeded \$1,000 (the eligibility requirement threshold), F may not file Form 944 for calendar year 2007. Based on F's liability during the lookback period (calendar year 2005, pursuant to § 31.6302–1T(b)(4)(i)), F is a monthly depositor for 2007. F accumulates \$1,000 in employment taxes during January 2007. Because F is a monthly depositor, F's January deposit obligation is due February 15, 2007. F does not deposit these accumulated employment taxes on February 15, 2007. F accumulates \$1,500 in employment taxes during February 2007. F's February deposit is due March 15, 2007. F deposits the \$2,500 of employment taxes accumulated during January and February on March 15, 2007. Pursuant to § 31.6302–1T(c)(6), F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

(e) through (f)(4)(ii) [Reserved]. For further guidance, see § 31.6302–1(e) through (f)(4)(ii).

(iii) *De minimis deposit rule for employers currently in the Employers' Annual Federal Tax Program (Form 944).* An employer in the Employers'

Annual Federal Tax Program (Form 944) whose employment tax liability for the year equals or exceeds \$2,500 but whose employment tax liability for a quarter of the year is *de minimis* pursuant to § 31.6302–1(f)(4)(i) will be deemed to have timely deposited the employment taxes due for that quarter if the employer fully deposits the employment taxes accumulated during the quarter by the last day of the month following the close of that quarter. Employment taxes accumulated during the fourth quarter can be either deposited by January 31 or remitted with a timely filed return for the return period.

(5) *Examples 1 and 2* [Reserved]. For further guidance, see § 31.6302–1(f)(5) *Examples 1 and 2*.

*Example 3. De minimis deposit rule for employers currently in the Employers' Annual Federal Tax Program (Form 944) satisfied.* K (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. In the first quarter of 2006, K accumulates employment taxes in the amount of \$1,000. On April 28, 2006, K deposits the \$1,000 of employment taxes accumulated in the 1st quarter. K accumulates another \$1,000 of employment taxes during the second quarter of 2006. On July 31, 2006, K deposits the \$1,000 of employment taxes accumulated in the 2nd quarter. K's business grows and accumulates \$1,500 in employment taxes during the third quarter of 2006. On October 31, 2006, K deposits the \$1,500 of employment taxes accumulated in the 3rd quarter. K accumulates another \$2,000 in employment taxes during the fourth quarter. K files Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of \$5,500 and submits a check for the remaining \$2,000 of employment taxes with the return. K will be deemed to have timely deposited the employment taxes due for all of 2006, because K complied with the *de minimis* deposit rule provided in § 31.6302–1T(f)(4)(iii). Therefore, the IRS will not impose a failure-to-deposit penalty under section 6656 for any month of the year. Under this *de minimis* deposit rule, as K was required to file Form 944 for calendar year 2006, if K's employment tax liability for a quarter is *de minimis*, then K may deposit that quarter's liability by the last day of the month following the close of the quarter. This new *de minimis* rule allows K to have the benefit of the same quarterly *de minimis* amount K would have received if K filed Form 941 each quarter instead of Form 944 annually. Thus, as K's employment tax liability for each quarter was *de minimis*, K could deposit quarterly.

(g) through (n) [Reserved]. For further guidance, see § 31.6302–1(g) through (n).

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 8, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary for Tax Policy.*

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## DEPARTMENT OF JUSTICE

### Justice Management Division

#### 28 CFR Part 16

[AAG/A Order No. 019–2005]

#### Privacy Act of 1974; Implementation

**AGENCY:** Justice Management Division, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice (DOJ), Justice Management Division (JMD), is exempting from certain subsections of the Privacy Act, a new Privacy Act system of records entitled “Federal Bureau of Investigation Whistleblower Case Files, JMD–023.” The system maintains all documents and evidence filed with the Director of the Office of Attorney Recruitment and Management (OARM), JMD, pertaining to requests for corrective action by employees of, or applicants for employment with, the Federal Bureau of Investigation (FBI) (or recommendations for corrective action by the Office of the Inspector General or Office of Professional Responsibility) brought under the FBI's whistleblower regulations.

**Effective Date:** This final rule is effective January 3, 2006.

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

**SUPPLEMENTARY INFORMATION:** The FBI's whistleblower regulations are at 28 CFR part 27; the specific role of the OARM is at 28 CFR part 27.4. This is the basis for the new system of records, “Federal Bureau of Investigation Whistleblower Case Files, JMD–023.” The DOJ/JMD is exempting this system of records from 5 U.S.C. 552a (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k).

On September 7, 2005 (70 FR 53133) 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 Procedures, Courts, Freedom of Information, Sunshine Act and Privacy.

■ 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, 9701.

#### § 16.76 Exemption of Justice Management Division.

■ 2. Section 16.76 is amended by adding paragraphs (c) and (d) to read as follows:

\* \* \* \* \*

(c) The following system of records is exempted from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g): Federal Bureau of Investigation Whistleblower Case Files (Justice/JMD–023). These exemptions apply only to the extent that information in a record contained within this system is subject to exemptions pursuant to 5 U.S.C. 552a(j)(2) and (k).

(d) Exemption from the particular subsections is justified for the following reasons:

(1) *Subsection (c)(3)*. To provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures.

(2) *Subsection (c)(4)*. This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1)*. Information within this record system could relate to official federal investigations and matters of law enforcement. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Disclosure may also reveal information relating to actual or potential law enforcement investigations. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) *Subsection (d)(2)*. Amendment of these records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsections (d)(3) and (4)*. These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1)*. It is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2)*. To collect information from the subject individual could serve to notify the subject individual that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(8) *Subsection (e)(3)*. To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(9) *Subsection (e)(5)*. It is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) *Subsection (e)(8)*. To serve notice could give persons sufficient warning to evade investigative efforts.

(11) *Subsection (g)*. This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: December 21, 2005.

**Paul R. Corts,**

*Assistant Attorney General for Administration.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 35

[EPA–HQ–OW–2005–0038; FRL–8017–9]

#### Allotment Formula for Clean Water Act (CWA) Section 106 Funds; Amendment

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

**ACTION:** Final rule.

**SUMMARY:** This amendment to 40 CFR 35.162 will address a situation which occurred in EPA's FY 2006 CWA Section 106 appropriation process. The President's FY 2006 budget specifically requested an increase in Section 106 funding for enhanced monitoring activities, particularly for statistically-valid assessments of water quality nationwide and for strengthening State and interstate monitoring programs. This action announces EPA's amendment of its CWA allocation regulation to provide the Agency with the flexibility to allot separately these funds that have been appropriated by Congress for Section 106 grants and targeted for monitoring. The amendment applies only to those portions of Section 106 funds which have been targeted in EPA's appropriations process for specific water pollution control elements.

**DATES:** This final rule is effective on January 3, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OW–2005–0038. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is publicly available only in hard copy. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone