

**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

number for the Water Docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:**

Lena Ferris, Office of Water, Office of Wastewater Management, 4201M, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564-8831; fax number: (202) 501-2399; email address: [ferris.lena@epa.gov](mailto:ferris.lena@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*Regulated Entities:* States and interstate agencies that are eligible to receive grants under Section 106 of the CWA.

**II. Background**

Section 106 of the CWA authorizes the EPA to provide grants to States and interstate agencies to administer programs for the prevention, reduction, and elimination of water pollution, including the development and implementation of ground-water protection strategies. Section 106(b) of the CWA directs the EPA Administrator to make allotments for grants from sums appropriated by Congress in each fiscal year "in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective States". EPA developed and promulgated 40 CFR 35.160-35.168 for allocating funds to the States and eligible interstate agencies.

The amendment to 40 CFR 35.162 will address a situation like that which occurred in EPA's FY 2006 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 strengthening State and interstate monitoring programs. The 2006 Conference Report, which accompanied EPA's 2006 appropriation act, indicated that a total of \$18.5 million should be targeted to support enhanced monitoring efforts. EPA determined that if this amount were included in the general State and interstate allotment formulae, only a small number of States and interstates would actually receive an increase for this purpose while the majority of States would not receive a sufficient increase to strengthen their water quality monitoring activities through implementation of their monitoring strategies. As a result, EPA is amending 40 CFR 35.162 to provide the Agency with the authority to allot separately those CWA Section 106 funds

which are targeted to specific water pollution control elements, as determined by EPA based on a review of the President's budget, Conference Reports, and/or appropriation acts. In developing this allotment formula, EPA will consult with the States and interstate agencies in determining the most appropriate mechanism to implement the alternative allocation formula, based on the extent of pollution. EPA intends to exercise its discretion and use this alternate allotment formula only in situations where the appropriations process has indicated that funds should be used for a specific purpose. The remaining Section 106 funds will continue to be allotted in accordance with applicable allotment formulae used by the Agency.

**III. Additional Supplementary Information**

This action announces EPA's amendment of 40 CFR 35.162 by adding section (d).

**IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments. This action does not have Tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*,

generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

**List of Subjects in 40 CFR Part 35**

Environmental protection, Grant programs-environmental protection, Water pollution control.

Dated: December 23, 2005.

**Benjamin H. Grumbles,**

*Assistant Administrator, Office of Water.*

■ For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

**PART 35—[AMENDED]**

■ 1. The authority for citation for Part 35, Subpart A continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Pub. L. 104-134, 110 Stat. 1321, 1321-299 (1966); Pub.L. 105-65, 111 Stat. 1344, 1373 (1997).

**Subpart A—[Amended]**

■ 2. Section 35.162 is amended by adding paragraph (d) to read as follows:

**§ 35.162 Basis for allotment.**

\* \* \* \* \*

(d) *Alternative allotment formula.* Notwithstanding paragraphs (b) and (c) of this section, if the Administrator determines that a portion of the funds appropriated under the Water Pollution Control grant program should be allotted for specific water pollution control elements, the Administrator may allot those funds to States and interstate agencies in accordance with a formula determined by him after consultation with the respective States and interstate agencies. The Administrator will make this determination under this paragraph only if EPA's appropriation process indicates that these funds should be used for this purpose.

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