

(b) A petition to establish a Regional Advisory Body shall include all organizational documents and a statement that the Regional Advisory Body is composed of one member from each participating state in the region, appointed by the governor of each state, and may include representatives of agencies, states and provinces outside the United States.

(c) A Regional Advisory Body established by the Commission may provide advice to the Commission, Electric Reliability Organization or a Regional Entity with respect to:

(1) The governance of an existing or proposed Regional Entity within the same region;

(2) Whether a Reliability Standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest;

(3) Whether fees for all activities under this section proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

(4) Any other responsibilities requested by the Commission.

(d) The Commission may give deference to the advice of a Regional Advisory Body established by the Commission if it is organized on an Interconnection-wide basis.

#### **§ 38.11 Reliability reports.**

(a) The Electric Reliability Organization shall conduct periodic assessments of the reliability and adequacy of the Bulk-Power System in North America and report its findings to the Commission, the Secretary of Energy, Regional Entities, and Regional Advisory Bodies annually or more frequently if so ordered by the Commission.

(b) The Electric Reliability Organization and Regional Entities shall report on their enforcement actions and associated penalties to the Commission, the Secretary of Energy, relevant Regional Entities, and relevant Regional Advisory Bodies annually or quarterly, in a manner to be prescribed by the Commission.

#### **§ 38.12 Review of state action.**

(a) Nothing in this regulation shall be construed to preempt any authority of any state to take action to ensure the safety, adequacy, and reliability of electric service within that state, as long as such action is not inconsistent with any reliability standard.

(b) Where a state takes action to ensure safety, adequacy, and reliability of electric service, the Electric

Reliability Organization, Regional Entity or other affected party may apply to the Commission for a determination of consistency with a Commission-approved Reliability Standard.

(1) The application shall:

(i) Identify the state action complained of;

(ii) Identify the Reliability Standard(s) with which the state action is claimed to be inconsistent;

(iii) State the basis for the claim that the state action is inconsistent with a Reliability Standard; and

(iv) Include a form of notice.

(2) Within ninety (90) days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for public comment, the Commission shall issue a final order determining whether the state action is inconsistent with a Reliability Standard, taking into consideration any recommendation of the Electric Reliability Organization.

(c) The Commission, after consultation with the Electric Reliability Organization and the state taking action, may stay the effectiveness of the state action, pending the Commission's issuance of a final order.

#### **§ 38.13 Funding of the Electric Reliability Organization.**

(a) The Electric Reliability Organization shall file with the Commission its proposed annual budget for activities within the United States and supporting materials in sufficient detail to justify the requested funding requirement 130 days in advance of the beginning of each fiscal year.

(b) The Commission, after public notice and opportunity for comment, shall issue an order either accepting, rejecting or remanding or modifying the proposed Electric Reliability Organization budget and business plan no later than sixty (60) days in advance of the beginning of the Electric Reliability Organization's fiscal year.

(c) Any person who submits an application for certification as the Electric Reliability Organization pursuant to the rules set forth in this section shall include in such application a plan, formula and/or methodology for the allocation and assessment of Electric Reliability Organization dues, fees and charges. The certified Electric Reliability Organization may subsequently file with the Commission a request to modify the plan, formula and/or methodology from time-to-time in the Electric Reliability Organization's discretion.

(d) All entities within the Commission's jurisdiction as set forth in section 215(b) of the Federal Power Act

are required to pay the Electric Reliability Organization's assessment of dues, fees and charges in a timely manner reasonably designated by the Electric Reliability Organization.

(e) Any person who submits an application for certification as the Electric Reliability Organization pursuant to the rules set forth in this section may include in such application a plan for a transitional funding mechanism that would allow such person, if certified as the Electric Reliability Organization, to continue existing operations without interruption as it transitions from one method of funding to another. The maximum duration of any proposed transitional funding mechanism is not to exceed eighteen (18) months from the date of certification.

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## **DEPARTMENT OF JUSTICE**

### **28 CFR Part 16**

[AAG/A Order No. 009-2005]

#### **Justice Management Division; Privacy Act of 1974; Implementation**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice (DOJ), Justice Management Division (JMD), proposes to exempt from certain subsections of the Privacy Act, a new Privacy Act system of records entitled "Federal Bureau of Investigation Whistleblower Case Files, JMD-023," as described in today's notice section of the **Federal Register**. 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.

**DATES:** Submit any comments by October 17, 2005.

**ADDRESSES:** Address all comments in writing to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building), Facsimile Number (202) 307-1853. To ensure proper handling, please reference the AAG/A Order No.

on your correspondence. You may review an electronic version of this proposed rule at <http://www.regulations.gov>. You may also comment via the Internet to the DOJ/Justice Management Division at the following e-mail address: [DOJPrivacyACTProposedRegulations@usdoj.gov](mailto:DOJPrivacyACTProposedRegulations@usdoj.gov); or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically, you must include the AAG/A Order No. in the subject box.

**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 proposes to exempt 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).

This order 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 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 Procedures, Courts, Freedom of Information, Sunshine Act, 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, it is proposed to amend 28 CFR part 16 as follows:

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 [Amended]

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: August 31, 2005.

**Paul R. Corts,**

*Assistant Attorney General for Administration.*

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## FEDERAL MEDIATION AND CONCILIATION SERVICE

### 29 CFR Part 1404

#### Proposed Changes to Arbitration Policies, Functions, and Procedures

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Proposed rule: extension of comment period.

**SUMMARY:** This document extends the comment period for the proposed rule published on July 7, 2005 at 70 FR page 39209.

The Federal Mediation and Conciliation Service (FMCS) is proposing to revise 29 CFR part 1404, Arbitration Services. The revisions are intended to set forth the criteria and procedures for listing on the arbitration roster, removal from the arbitration roster, and expedited arbitration processing. Other changes include how parties may request arbitration lists or panels and fees associated with the arbitrators. The purpose of these changes is to facilitate the management and administration of the arbitration roster.

**DATES:** Written comments must be submitted to the office listed in the address section below on or before December 6, 2005.