

Form, but indicates that this rate is subject to change from time to time, without notice, by act of Congress through appropriations for the Commission or other laws.

On October 21, 1998, legislation was enacted that sets the fee rate at \$278 per \$1,000,000 offered or sold (prorated for amounts less than \$1,000,000). Fees will be calculated by multiplying the aggregate offering or sales amount by .000278.

The Commission is amending the Instruction to Item 5(vii) of Form 24F-2 to reflect the change in the fee rate.

#### Statutory Authority

The Commission is amending Form 24F-2 pursuant to the authority set forth in sections 24 and 38(a) of the Investment Company Act [15 U.S.C. 80a-24, -37(a)].

#### Text of Form Amendments

For the reasons set out in the preamble, Form 24F-2, referenced in § 274.24, Title 17, Chapter II of the Code of Federal Regulations, is amended as follows:

#### PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 274 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, and 80a-29, unless otherwise noted.

2. Form 24F-2 (referenced in § 274.24) is amended by revising the second and third sentences of Instruction C.9 to Item 5(vii) to read as follows:

**Note:** Form 24F-2 does not, and the amendments will not, appear in the *Code of Federal Regulations*.

Form 24F-2

Annual Notice of Securities Sold  
Pursuant to Rule 24f-2

\* \* \* \* \*

Instructions

\* \* \* \* \*

C. Computation of Registration Fee

\* \* \* \* \*

9. Item 5(vii)—\* \* \* As of October 22, 1998, the fee rate was \$278 per \$1,000,000 offered or sold (prorated for amounts less than \$1,000,000). The registration fee is calculated by multiplying the aggregate offering or sales amount by .000278. \* \* \*

\* \* \* \* \*

For the Commission, by the Office of the Secretary, pursuant to delegated authority.

Dated: November 4, 1998.

**Jonathan G. Katz,**

Secretary.

[FR Doc. 98-30011 Filed 11-9-98; 8:45 am]

BILLING CODE 8010-01-U

## DEPARTMENT OF JUSTICE

### 28 CFR Parts 0 and 27

[A.G. Order No. 2190-98]

RIN 1105-AA60

### Whistleblower Protection For Federal Bureau of Investigation Employees

**AGENCY:** Department of Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule establishes procedures under which employees of the Federal Bureau of Investigation may make disclosures of information protected by the Civil Services Reform Act of 1978 (Pub. L. No. 95-454) and the Whistleblower Protection Act of 1989 (Pub. L. No. 101-12), codified at 5 U.S.C. 2303. It also establishes procedures under which the Department of Justice (the Department) will investigate allegations by Federal Bureau of Investigation (FBI) employees of retaliation for making such disclosures and provide appropriate corrective action.

**DATES:** *Effective date:* November 10, 1998.

*Comment Date:* Comments are due on or before January 11, 1999.

**ADDRESSES:** Interested parties should submit written comments to: Stuart Frisch, General Counsel, Office of the General Counsel, Justice Management Division, United States Department of Justice, 10th and Pennsylvania Ave., N.W., Washington, D.C., 20530.

E-mail comments submitted over the Internet should be addressed to caterini@justice.usdoj.gov.

**FOR FURTHER INFORMATION CONTACT:** Stuart Frisch, General Counsel, or John Caterini, Attorney-Advisor, Office of the General Counsel, Justice Management Division, U.S. Department of Justice, (202) 514-3452.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Under sections 1214 and 1221 of title 5 of the United States Code, most Federal employees who believe they have been the victim of a prohibited personnel practice, including retaliation for whistleblowing, have the right to request an investigation by the Office of Special Counsel (OSC) (section 1214) or,

in appropriate circumstances, to pursue an individual right of action before the Merit Systems Protection Board (MSPB) (sections 1214(a)(3) & 1221). Under 5 U.S.C. 2302(a)(2)(C)(ii), the FBI is expressly excluded from the scheme established by sections 1214 and 1221. Section 2303(a) of title 5, however, separately prohibits employees of the FBI from retaliating against whistleblowers. Section 2303(b) charges the Attorney General with prescribing regulations to ensure that such retaliation not be taken, and section 2303(c) charges the President with providing for the enforcement of section 2303 "in a manner consistent with applicable provisions of section 1214 and 1221."

On April 14, 1997, the President delegated to the Attorney General his "functions concerning employees of the Federal Bureau of Investigation vested in [him] by . . . section 2303(c) of title 5, United States Code," and directed the Attorney General to establish "appropriate processes within the Department of Justice to carry out these functions." See 62 FR 23123 (1997).

Accordingly, this interim rule implements 5 U.S.C. 2303 (b) & (c). It supersedes and replaces 28 CFR 0.39c, which gave the Counsel for the Department's Office of Professional Responsibility authority to request a stay of a personnel action when he determined that there were reasonable grounds to believe that the action was taken as a reprisal for whistleblowing.

The rule designates the Department's Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), and the FBI's Office of Professional Responsibility as offices to which an FBI employee (or applicant for employment with the FBI) may disclose information that the employee or applicant reasonably believes evidences: violation of any law, rule or regulation; mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. Any such disclosure to one of these offices is protected, and the rule prohibits retaliation for making it. The rule further provides that OPR and OIG will investigate whistleblower retaliation claims, recommend stays of personnel actions, and recommended corrective action where appropriate. The Director, Office of Attorney Personnel Management (the Director), or his designee, will decide whistleblower retaliation claims presented to him by OPR or OIG, as well as those claims brought to him directly by an employee or applicant in appropriate circumstances. He will also grant stays

of personnel actions and order corrective action when appropriate. The rule grants powers and functions to the investigating offices (*i.e.*, OPR or OIG) and to the Director that are consistent with those granted to the OSC and MSPB in sections 1214 and 1221. Time frames specified in the statute generally were imported from those provided for in the OSC/MSPB system. The regulations allow for an extension of any time limit in extenuating circumstances.

Sections 1214(c) and 1221(h) of title 5 provide for judicial review by the Court of Appeals for the Federal Circuit. Section 2303(c), however, authorizes the Executive Branch to resolve allegations of whistleblower reprisal involving the FBI without reference to judicial review. Because only Congress is empowered to waive sovereign immunity, and section 2303 does not include such a waiver, this rule does not provide for judicial review. The rule provides for review of the Director's decision by the Deputy Attorney General or his designee, who will review the decision under the standard set forth in 5 U.S.C. 7703(c). That is, the Deputy Attorney General shall review the record and modify or set aside the Director's actions, findings, or conclusions found to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence. The Deputy Attorney General has full discretion to review and modify corrective action ordered by the Director, provided, however, that if the Deputy Attorney General upholds a finding that there has been a reprisal, then the Deputy Attorney General shall order appropriate corrective action. The regulation provides this discretionary review because the Attorney General, as head of the Department, must retain ultimate authority over any decision that might relate to or affect the management of the FBI; under 28 CFR 0.15, the Deputy Attorney General is generally authorized to exercise all the power and authority of the Attorney General.

This interim rule is effective upon publication in the **Federal Register**, although the Department invites post-promulgation comments and will address any such comments in a final rule. The Department finds that good cause exists under 5 U.S.C. 553(b) and (d)(3) for adopting this as an interim rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. This rule provides formal procedures under which employees of,

or applicants for employment with, the FBI may make certain protected disclosures of information and establishes procedures under which the Department will investigate allegations of reprisal for making any such disclosure. It provides a benefit to FBI employees or applicants for employment with the FBI. These procedures provide additional protection to such employees and applicants, and it is in the public interest to provide such protection without delay.

## **B. Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This rule merely establishes procedures under which employees or applicants for employment with the FBI, may make certain protected disclosures of information and establishes procedures under which the Department will investigate allegations of retaliation against such individuals.

## **C. Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Department has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

## **D. Executive Order 12612**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

## **E. Unfunded Mandates Reform Act of 1995**

This rule will not, in the aggregate, result in the expenditure by State, local and tribal governments, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions

of the Unfunded Mandates Reform Act of 1995.

## **F. Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

## **List of Subjects in 28 CFR Part 27**

Government Employees; Justice Department; Organization and functions (Government agencies); Whistleblowing.

For the reasons stated in the preamble, title 28 of the Code of Federal Regulations is amended as follows:

### **§ 0.39c [Removed]**

1. In Subpart G-2 of Part 0, remove section 0.39c.
2. Add Part 27 to read as follows:

## **PART 27—WHISTLEBLOWER PROTECTION FOR FEDERAL BUREAU OF INVESTIGATION EMPLOYEES**

### **Subpart A—Protected Disclosures of Information**

- § 27.1 Making a protected disclosure.
- § 27.2 Prohibition against reprisal for making a protected disclosure.

### **Subpart B—Investigating Reprisal Allegations and Ordering Corrective Action**

- § 27.3 Investigations: Office of Professional Responsibility and Office of the Inspector General.
- § 27.4 Corrective action and other relief: Director, Office of Attorney Personnel Management.
- § 27.5 Review.
- § 27.6 Extensions of time.

**Authority:** 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519; 5 U.S.C. 2303; President's Memorandum to the Attorney General, Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978, 3 CFR p. 284 (1997).

### **Subpart A—Protected Disclosures of Information**

#### **§ 27.1 Making a protected disclosure.**

(a) When an employee of, or applicant for employment with, the Federal Bureau of Investigation (FBI) (FBI employee) makes a disclosure of information to either the Department of Justice's (Department's) Office of Professional Responsibility (OPR), the Department's Office of Inspector

General (OIG), or the FBI Office of Professional Responsibility (collectively, Receiving Offices), the disclosure will be a "protected disclosure" if the person making it reasonably believes that it evidences:

(1) A violation of any law, rule or regulation; or

(2) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) When a Receiving Office receives a protected disclosure, it shall proceed in accordance with existing procedures establishing jurisdiction among the respective Receiving Offices.

#### **§ 27.2 Prohibition against reprisal for making a protected disclosure.**

(a) Any employee of the FBI, or of any other component of the Department, who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take a personnel action, as defined below, with respect to any FBI employee as a reprisal for a protected disclosure.

(b) Personnel action means any action described in clauses (i) through (x) of 5 U.S.C. 2302(a)(2)(A) taken with respect to an FBI employee other than one in a position which the Attorney General has designated in advance of encumbrance as being a position of a confidential, policy-determining, policy-making, or policy-advocating character.

#### **Subpart B—Investigating Reprisal Allegations and Ordering Corrective Action**

##### **§ 27.3 Investigations: Office of Professional Responsibility and Office of the Inspector General.**

(a)(1) An FBI employee who believes that another employee of the FBI, or of any other Departmental component, has taken or has failed to take a personnel action as a reprisal for a protected disclosure (reprisal), may report the alleged reprisal to either the Department's OPR or the Department's OIG (collectively, Investigative Offices). The report of an alleged reprisal must be made in writing.

(2) For purposes of this Subpart, references to the FBI include any other Departmental component in which the person or persons accused of the reprisal were employed at the time of the alleged reprisal.

(b) The Investigative Office that receives the report of an alleged reprisal shall consult with the other Investigative Office to determine which office is more suited, under the circumstances, to conduct an investigation into the allegation. The

Attorney General retains final authority to designate or redesignate the Investigative Office that will conduct an investigation.

(c) Within 15 calendar days of the date the allegation of reprisal is first received by an Investigative Office, the office that will conduct the investigation (Conducting Office) shall provide written notice to the person who made the allegation (Complainant) indicating—

(1) That the allegation has been received; and

(2) The name of a person within the Conducting Office who will serve as a contact with the Complainant.

(d) The Conducting Office shall investigate any allegation of reprisal to the extent necessary to determine whether there are reasonable grounds to believe that a reprisal has been or will be taken.

(e) Within 90 calendar days of providing the notice required in paragraph (c) of this section, and at least every 60 calendar days thereafter (or at any other time if the Conducting Office deems appropriate), the Conducting Office shall notify the Complainant of the status of the investigation.

(f) The Conducting Office shall determine whether there are reasonable grounds to believe that there has been or will be a reprisal for a protected disclosure. The Conducting Office shall make this determination within 240 calendar days of receiving the allegation of reprisal.

(g) If the Conducting Office decides to terminate an investigation, it shall provide, no later than 10 business days before providing the written statement required by paragraph (h) of this section, a written status report to the Complainant containing the factual findings and conclusions justifying the termination of the investigation. The Complainant may submit written comments on such report to the Conducting Office. The Conducting Office shall not be required to provide a subsequent written status report after submission of such comments.

(h) If the Conducting Office terminates an investigation, it shall prepare and transmit to the Complainant a written statement notifying him/her of—

(1) The termination of the investigation;

(2) A summary of relevant facts ascertained by the Conducting Office;

(3) The reasons for termination of the investigation; and

(4) A response to any comments submitted under paragraph (g) of this section.

(i) Such written statement prepared pursuant to paragraph (h) of this section may not be admissible as evidence in any subsequent proceeding without the consent of the Complainant.

(j) Nothing in this part shall prohibit the Receiving Offices, in the absence of a reprisal allegation by an FBI employee under this part, from conducting an investigation, under their pre-existing jurisdiction, to determine whether a reprisal has been or will be taken.

#### **§ 27.4 Corrective action and other relief: Director, Office of Attorney Personnel Management.**

(a) If, in connection with any investigation, the Conducting Office determines that there are reasonable grounds to believe that a reprisal has been or will be taken, the Conducting Office shall report this conclusion, together with any findings and recommendations for corrective action, to the Director, Office of Attorney Personnel Management (the Director). If the Conducting Office's report to the Director includes a recommendation for corrective action, the Director shall provide an opportunity for comments on the report by the FBI and the Complainant. The Director, upon receipt of the Conducting Office's report, shall proceed in accordance with paragraph (f) of this section.

(b) At any time, the Conducting Office may request the Director to order a stay of any personnel action for 45 calendar days if it determines that there are reasonable grounds to believe that a reprisal has been or is to be taken. The Director shall order such stay within three business days of receiving the request for stay, unless the Director determines that, under the facts and circumstances involved, such a stay would not be appropriate. The Director may extend the period of any stay granted under this paragraph for any period that the Director considers appropriate. The Director shall allow the FBI an opportunity to comment to the Director on any proposed extension of a stay. The Director may terminate a stay at any time, except that no such termination shall occur until the Complainant and the Conducting Office shall first have had notice and an opportunity to comment.

(c)(1) The Complainant may present a request for corrective action directly to the Director within 60 calendar days of receipt of notification of termination of an investigation by the Conducting Office or at any time after 120 calendar days from the date the Complainant first notified an Investigative Office of an alleged reprisal if the Complainant has not been notified by the Conducting

Office that it will seek corrective action. The Director shall notify the FBI of the receipt of the request and allow the FBI 25 calendar days to respond in writing. If the Complainant presents a request for corrective action to the Director under this paragraph, the Conducting Office may continue to investigate the reprisal allegation only with the consent of the Complainant. If the Complainant refuses such consent, the Conducting Office will discontinue investigation of the reprisal allegation and will not prepare a report for the Director. In such event, however, the Conducting Office may continue to investigate any separate violation of law, rule, or regulation discovered during the investigation of reprisal that is otherwise within the Conducting Office's pre-existing jurisdiction. When the Complainant presents a request for corrective action directly to the Director and does not consent to the Conducting Office continuing an independent investigation of the reprisal allegation, the Conducting Office shall submit to the Complainant and to the FBI its Memoranda of Interviews (or portions thereof) that relate to the reprisal investigation, consistent with the Conducting Office's obligations regarding confidentiality and privacy.

(2) The Director may not direct the Conducting Office to reinstate an investigation that the Conducting Office has terminated in accordance with section 27.3(h).

(d) Where a Complainant has presented a request for corrective action directly to the Director under paragraph (c)(1) of this section, the Director may hold a hearing at which the Complainant may present evidence in support of his or her claim, in accordance with such procedures as the Director may adopt. The Director is hereby authorized to compel the attendance and testimony of, or the production of documentary or other evidence from, any person employed by the Department if doing so appears reasonably calculated to lead to the discovery of admissible evidence, is not otherwise prohibited by law or regulation, and is not unduly burdensome. Any privilege available in judicial and administrative proceedings relating to the release of documents or the giving of testimony shall be available to the parties in the hearing before the Director. All assertions of such privileges shall be decided by the Director. Upon the request of either the Complainant, the Conducting Office, or the FBI, the Director may certify a ruling on an assertion of privilege for review by the Deputy Attorney General.

(e) Where a Complainant has presented a request for corrective action to the Director under paragraph (c) of this section, the Complainant may at any time request the Director to order a stay of any personnel action allegedly taken or to be taken in reprisal for a protected disclosure. The request for a stay must be in writing, and the FBI shall have an opportunity to respond. The request shall be granted within 10 business days of the receipt of any response by the FBI if the Director determines that such a stay would be appropriate. A stay granted under this paragraph shall remain in effect for such period as the Director deems appropriate. The Director may modify or dissolve a stay under this paragraph at any time if the Director determines that such a modification or dissolution is appropriate.

(f) The Director shall determine, based upon all the evidence, whether a protected disclosure was a contributing factor in a personnel action taken or to be taken. If the Director determines that a protected disclosure was a contributing factor in a personnel action taken or to be taken, he shall order corrective action as he deems appropriate. The Director may conclude that the disclosure was a contributing factor in the personnel action based upon circumstantial evidence, such as evidence that the employee taking the personnel action knew of the disclosure or that the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action. Corrective action may not be ordered, however, if the FBI demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(g) If the Director orders corrective action, such corrective action may include: placing the Complainant, as nearly as possible, in the position he would have been in had the reprisal not taken place; reimbursement for attorneys fees, reasonable costs, medical costs incurred, and travel expenses; back pay and related benefits; and any other reasonable and foreseeable consequential damages.

(h) If the Director determines that there has not been a reprisal, the Director shall report this finding in writing to the Complainant, the FBI, and the Conducting Office.

#### **§ 27.5 Review.**

The Complainant or the FBI may request from the Deputy Attorney General a review of the Director's decision within 30 calendar days. The

Deputy Attorney General (or a designee) shall set aside or modify the Director's actions, findings, or conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence. The Deputy Attorney General has full discretion to review and modify corrective action ordered by the Director, provided, however, that if the Deputy Attorney General upholds a finding that there has been a reprisal, then the Deputy Attorney General shall order appropriate corrective action.

#### **§ 27.6 Extensions of time.**

The Director may extend, for extenuating circumstances, any of the time limits provided in these regulations relating to proceedings before him and to requests for review by the Deputy Attorney General.

Dated: October 29, 1998.

**Janet Reno,**

*Attorney General.*

[FR Doc. 98-29700 Filed 11-9-98; 8:45 am]

BILLING CODE 4410-AR-M

## **DEPARTMENT OF THE TREASURY**

### **Office of Foreign Assets Control**

#### **31 CFR Part 560**

#### **Iranian Transactions Regulations: Reporting on Foreign Affiliates' Oil-Related Transactions**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule; amendment.

**SUMMARY:** The Treasury Department is amending the Iranian Transactions Regulations to terminate the reporting requirement for subsidiaries' Iranian petrochemical transactions and Iran-related sales of services (including insurance and financing) and goods (including oilfield supplies and equipment).

**EFFECTIVE DATE:** November 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michael Layne, Blocked Assets Division (tel: 202/622-2440), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

#### **SUPPLEMENTARY INFORMATION:**

#### **Electronic Availability**

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the