

Rules and Regulations

Federal Register

Vol. 73, No. 6

Wednesday, January 9, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206-AL27

Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: On behalf of the President's Pay Agent, the Office of Personnel Management is issuing final regulations on the locality pay program for General Schedule and certain other employees. Originally published on June 22, 2007 as an interim rule with a request for comments, the regulations added Whatcom County, WA, to the Seattle locality pay area effective with the first pay period that began on or after July 23, 2007, removed the reference to a January effective date for changes made by the President's Pay Agent in locality pay area boundaries, made a number of changes in the official names of locality pay areas to correspond to revised names of Metropolitan Statistical Areas and Combined Statistical Areas as established by the Office of Management and Budget, and provided notice and documentation of a number of changes in locality pay area boundaries that resulted from revisions in Metropolitan and Combined Statistical Areas. We received no comments on the interim rule and adopt the final rule without change.

DATES: *Effective on* February 8, 2008 we are adopting as a final rule the interim rule published at 72 FR 34361 on June 22, 2007.

Applicability Date: The regulations were applicable on the first day of the first pay period that began on or after July 23, 2007.

FOR FURTHER INFORMATION CONTACT: Allan Hearne, (202) 606-2838; FAX:

(202) 606-4264; e-mail: pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code, and 5 CFR part 531, subpart F, authorize locality pay for General Schedule (GS) and certain other employees with official worksites in the 48 contiguous United States and the District of Columbia. Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas.

On June 22, 2007 (72 FR 34361), OPM published an interim rule to add Whatcom County, WA, to the Seattle locality pay area, remove the reference to a January effective date for changes made by the President's Pay Agent in locality pay area boundaries, and make a number of changes in the official names of locality pay areas to correspond to revised names of Metropolitan Statistical Areas (MSAs) and Combined Statistical Areas (CSAs) as established by the Office of Management and Budget. The regulations also provided notice and documentation of a number of changes in locality pay area boundaries that resulted from the revisions in MSAs and CSAs. We received no comments on the interim rule and OPM is adopting the rule as final without changes.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the interim rule amending 5 CFR part 531 published at

72 FR 34361 on June 22, 2007, is adopted as a final rule without change.

[FR Doc. E8-125 Filed 1-8-08; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 27

[Docket No. OAG 120; A.G. Order No. 2926-2008]

Technical Amendments to the Regulations Providing Whistleblower Protection for Federal Bureau of Investigation Employees

AGENCY: Office of the Inspector General and Office of Attorney Recruitment and Management, Justice.

ACTION: Final rule.

SUMMARY: This rule makes several technical amendments to the Department of Justice regulations that provide whistleblower protection for Federal Bureau of Investigation (FBI) employees.

DATES: *Effective Date:* January 9, 2008.

FOR FURTHER INFORMATION CONTACT: Louis DeFalaize, Director, Office of Attorney Recruitment and Management, U.S. Department of Justice, Washington, DC 20530, (202) 514-8900.

SUPPLEMENTARY INFORMATION: This rule makes four technical amendments to relevant portions of the Department of Justice regulations that provide whistleblower protections to FBI employees under 28 CFR parts 0 and 27. Three of the amendments are made so that the provisions conform with the organizational changes brought about by a restructuring of the FBI's Office of Professional Responsibility (FBI-OPR) in 2004, whereby FBI-OPR's investigatory function was moved to the FBI's Inspection Division (FBI-INSID) and FBI-OPR retained its adjudicatory role. The fourth change is made to conform the regulations with the implementing statute.

First, "the FBI Inspection Division (FBI-INSID) Internal Investigations Section," is added to the list of offices designated to receive a "protected" disclosure in 28 CFR 27.1(a) because that is the office now responsible for investigating and most likely to receive allegations of misconduct internal to the FBI.

Second, as presently worded, 28 CFR 27.1(b) provides that the Department's Office of Inspector General (OIG) or Office of Professional Responsibility (OPR) may refer whistleblower disclosures to FBI-OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made. To reflect the current assignment of responsibility, "FBI-OPR" in § 27.1(b) is changed to "FBI-INSND Internal Investigations Section."

Third, like § 27.1(b), 28 CFR 0.29d(a) provides that OIG or DOJ-OPR may refer whistleblower disclosures to FBI-OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made. "FBI-OPR" in § 0.29d(a) is changed to "FBI Inspection Division (FBI-INSND) Internal Investigations Sections."

Finally, this rule also makes a technical correction to 28 CFR 27.4(e)(1), so that the "contributing factor" standard in that provision is consistent with 5 U.S.C. 1221(e)(1), in accordance with Congress' directive in 5 U.S.C. 2303(c) that "[p]rohibited personnel practices in the [FBI]" be enforced "in a manner consistent with applicable provisions of [5 U.S.C.] sections 1214 and 1221." Section 1221(e)(1) provides, in relevant part:

[T]he Board shall order * * * corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant. The employee may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, such as evidence that—

(A) the official taking the personnel action knew of the disclosure; and (B) 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.

The rule will change the third "or" in § 27.4(e)(1) to "and" in order to track this statutory language.

Administrative Procedure Act

This rule relates to matters of agency personnel, organization, and procedure, and is therefore exempt from the requirements of notice and comment and a 30-day delay in the effective date of 5 U.S.C. 553(a)(2), (b)(3)(A), (d)(3).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that this regulation will not have a significant

economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The Department has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, Federalism, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federal summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a "major rule" as defined by section 251 of 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 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

This action pertains to agency personnel, organization, and procedure

and does not substantially affect the rights or obligations of non-agency parties. Accordingly it is not a "rule" for the purposes of the reporting requirement of 5 U.S.C. 801.

Congressional Review Act

The Department has determined that this action pertains to agency personnel, organization, and procedure and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Parts 0 and 27

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

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, parts 0 and 27 of title 28 of the Code of Federal Regulations are amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority for citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

Subpart E—4—Office of the Inspector General

■ 2. Revise paragraph (a) of § 0.29d to read as follows:

§ 0.29d Whistleblower Protection for FBI employees.

(a) *Protected disclosures by FBI employees.* Disclosures of information by an FBI employee that the employee reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety are protected disclosures when they are reported as provided in § 27.1 of this chapter. Any office or official (other than the OIG or DOJ-OPR) receiving a protected disclosure shall promptly report such disclosure to the OIG or DOJ-OPR. The OIG or DOJ-OPR may refer such allegations to FBI Inspection Division (FBI-INSND) Internal Investigations Section for investigation unless the Deputy Attorney General determines that such referral shall not be made.

* * * * *

PART 27—WHISTLEBLOWER PROTECTION FOR FEDERAL BUREAU OF INVESTIGATION EMPLOYEES

■ 3. The authority for citation for part 27 continues to read as follows:

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).

■ 4. Revise § 27.1 to read as follows:

§ 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 the Department of Justice's (Department's) Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), the FBI Office of Professional Responsibility (FBI OPR), the FBI Inspection Division (FBI-INSID) Internal Investigations Section (collectively, Receiving Offices), the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, or to the highest ranking official in any FBI field office, 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) Any office or official (other than the OIG or OPR) receiving a protected disclosure shall promptly report such disclosure to the OIG or OPR for investigation. The OIG and OPR shall proceed in accordance with procedures establishing their respective jurisdiction. The OIG or OPR may refer such allegations to FBI-INSID Internal Investigations Section for investigation unless the Deputy Attorney General determines that such referral shall not be made.

■ 5. Revise paragraph (e)(1) of § 27.4 to read as follows:

§ 27.4 Corrective action and other relief; Director, Office of Attorney Recruitment and Management.

* * * * *

(e)(1) 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. Subject to paragraph (e)(2) of this section, if the Director determines that a protected disclosure was a

contributing factor in a personnel action taken or to be taken, the Director shall order corrective action as the Director 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 and 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.

* * * * *

Dated: December 28, 2007.

Michael B. Mukasey,
Attorney General.

[FR Doc. 08–7 Filed 1–8–08; 8:45 am]

BILLING CODE 4410–PB–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. CGD07–07–107]

RIN 1625–AA09

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Mile 131.8, Clearwater, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations governing the Belleair Beach Bridge, Gulf Intracoastal Waterway, mile 131.8, Clearwater, Florida. This rule will allow the bridge to open on signal, except that from 7 a.m. to 7 p.m. this bridge will open on the hour and half-hour. This action is necessary for workers' safety and will assist in expediting the construction of the new bridge.

DATES: This rule is effective February 8, 2008.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [Docket No. CGD07–07–107] and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131–3028, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Administration Branch, telephone number 305–415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 18, 2007, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Gulf Intracoastal Waterway, mile 131.8, Clearwater, FL in the **Federal Register**, 72 FR 33423–33425. We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The existing regulation of the draw requires that the Belleair Beach Bridge, mile 131.8, Clearwater, FL shall open on signal; except that, from 12 noon to 6 p.m., on Saturdays, Sundays, and holidays, the draw need open only on the hour, quarter hour, half hour, and three-quarter hour.

Due to the construction of the new Belleair Beach high level fixed bridge, ECDriver, representing the owner of the bridge, requested that the Coast Guard change the current operation of the Belleair Beach Bridge. The bridge will be required to open twice an hour from 7 a.m. to 7 p.m. In addition, the waterway may be restricted or closed for short periods to allow for construction of the new bridge. Exact times and dates of any waterway restrictions and closures and bridge restrictions will be published in the Local Notice to Mariners and Broadcast Notice to Mariners. In cases of emergency, the bridge will be opened as soon as possible. This regulation is necessary for workers safety and will assist in expediting construction of the new bridge. Once the new Belleair Beach high level fixed bridge is near completion, we will propose to remove the regulation for the old drawbridge, as it will no longer be necessary.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking (NPRM). For this reason no changes were made to the proposed regulation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered