

Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 301-436-1302.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 2, 2006 (71 FR 31927), FDA amended the color additive regulations to add § 73.350 *Mica-based pearlescent pigments* (21 CFR 73.350) to provide for the safe use of titanium dioxide coated mica-based pearlescent pigments as color additives in the following foods: Cereals, confections and frostings, gelatin desserts, hard and soft candies (including lozenges), nutritional supplement tablets and gelatin capsules, and chewing gum.

FDA gave interested persons until July 3, 2006, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of June 2, 2006, should be confirmed.

#### List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Office of Food Additive Safety, notice is given that no objections or requests for a hearing were filed in response to the June 2, 2006, final rule. Accordingly, the amendments issued thereby became effective July 5, 2006.

Dated: September 8, 2006.

**Laura M. Tarantino,**

*Director, Office of Food Additive Safety,  
Center for Food Safety and Applied Nutrition.*  
[FR Doc. E6-15275 Filed 9-14-06; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF JUSTICE

### 28 CFR Parts 0 and 45

[AG Order No. 2835-2006]

#### Reporting Violations to the Office of the Inspector General and the Office of Professional Responsibility; Delegations of Authority

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations of the Department of Justice to codify the obligation to report misconduct to the Office of the Inspector General (OIG) and the

Department of Justice Office of Professional Responsibility (OPR), to reflect the conferral of statutory law enforcement authority on OIG special agents, to update the structure, functions, and responsibilities of OPR, and to reflect the current organizational structure of the OIG.

**DATES:** *Effective Date:* September 11, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Mary Anne Hoopes, Associate Counsel, Office of Professional Responsibility, United States Department of Justice, Washington, DC 20530 (202) 514-3365 (regarding matters related to OPR), or Gail A. Robinson, General Counsel, Office of the Inspector General, United States Department of Justice, Washington, DC 20530 (202) 616-0646 (regarding matters related to the OIG).

**SUPPLEMENTARY INFORMATION:** 1. This rule amends 28 CFR part 0 to clarify the delegation of authority by the Attorney General to the Counsel for Professional Responsibility and to codify authority of the Inspector General. This rule permits OPR and the OIG to investigate specific matters, make such recommendations as appropriate to the Deputy Attorney General and the Attorney General, and coordinate their activities to improve the professionalism of the Department and to reduce waste, fraud, and abuse.

2. This rule amends 28 CFR part 45 by adding three new sections. The rule codifies the Attorney General's April 12, 2002 Memorandum For Department of Justice Employees Regarding the Duty to Report Misconduct and Cooperate with Investigators. This Memorandum provides for notifying the OIG of fraud, waste, abuse, or misconduct, except for those matters in the jurisdiction of OPR. This rule is not a substantive change, but merely codifies existing practice. The rule also implements section 308 of the Department of Justice Appropriations Authorization Act for FY 2002 and 2003, Public Law 107-273 (Nov. 2, 2002), which amended 5 U.S.C. app. 3, 8E, and which provides in pertinent part:

The Attorney General shall ensure by regulation that any component of the Department of Justice receiving a nonfrivolous allegation of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, except with respect to allegations described in subsection (b)(3) [matters within the investigative jurisdiction of the Department of Justice Office of Professional Responsibility], shall report that information to the Inspector General.

This rule is also a codification of preexisting principles as set forth in the *United States Attorneys' Manual*,

§ 1-4.100, *Standards of Conduct Allegations of Misconduct by Department of Justice Employees Reporting Misconduct Allegations*. Although the language of section 308 of P.L. 107-273 is not identical to the prior regulations on this subject, the Attorney General interprets the statutory language as intended to codify the prior and existing practice.

3. This rule revises the description of OPR to reflect the changes made in that Office's jurisdiction since its creation on December 9, 1975, including AG Order 833-79 (45 FR 27754-55, April 24, 1980); AG Order 1931-94 (November 8, 1994), AG Order 2167-98 (63 FR 35847, July 8, 1998), AG Order 2190-98 (63 FR 62937-01, November 10, 1998), and AG Order 2492-2001 (66 FR 37902-01, July 20, 2001).

As originally constituted, OPR's jurisdiction was extraordinarily broad. OPR was empowered to "[r]eceive and review any information or allegation concerning conduct by a Department employee that may be in violation of law, regulations or orders, or of applicable standards of conduct or may constitute mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety." 28 CFR 0.39a(a). Its role in investigating those allegations, however, was relatively narrow, in keeping with its small size. OPR was to "[m]ake such preliminary inquiry as may be necessary to determine whether the matter should be referred to another official within the Department," 28 CFR 0.39a(c), and then to make an appropriate referral either to the head of the Department of Justice component to which the employee was assigned, or to that component's internal inspection unit, if no violation of law was alleged, or to the appropriate investigative agency, if the conduct appeared to involve a violation of law, 28 CFR 0.39a(d)(1) and (2). OPR then received reports from the investigating component on the status and outcome of investigations referred by OPR. 28 CFR 0.39a(e)(1). If OPR deemed it inappropriate to refer an allegation to the employing component, it was to refer the matter to the Attorney General and the Deputy Attorney General, or, if that would be inappropriate, to the Associate Attorney General or the Solicitor General. 28 CFR 0.39a(d)(3). In that event, OPR was to "recommend what further action should be undertaken" with respect to the allegation, "including the assignment of any task force or individual to undertake the action recommended." 28 CFR 0.39a(g). Finally, under 28 CFR 0.39a(h), OPR was authorized to

“[u]ndertake any investigation of a matter referred under paragraph (d)(3) of this section that may be assigned by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Solicitor General, or cooperate with any other organization, task force, or individual that may be assigned by such official to undertake the investigation.” 28 CFR 0.39a(h).

Consistent with the Attorney General’s authority to assign functions within the Department, the regulations provided that OPR was also authorized to “[u]ndertake any other responsibilities assigned by the Attorney General including duties relating to the improvement of the performance of the Department.” 28 CFR 0.39a(k).

Following the creation of the OIG in 1989, the role of OPR was focused specifically on addressing allegations of misconduct by Department attorneys and law enforcement personnel, accomplished through direct investigation by OPR or by OPR’s oversight of the Offices of Professional Responsibility of the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA). In 2001, general oversight of those offices was transferred to the OIG, while OPR was charged with investigating allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice, as well as allegations of misconduct by law enforcement personnel when they are related to allegations of attorney misconduct within the jurisdiction of OPR.

The Department believes that it is appropriate to update the organizational language within 28 CFR part 0 at this time to reflect more accurately the delegations of authority and investigative assignments made by statute and the Attorney General. Although the organic provisions of 28 CFR part 0 do not create substantive or procedural rights as a general proposition, clarity of understanding of the organization of, and responsibilities within, the Department benefits the public in general. In this instance, the Department is clarifying the internal investigative functions of OPR.

4. This rule also amends 28 CFR part 0 to reflect the conferral of statutory law enforcement authority on OIG special agents. The Department’s organizational regulations, 28 CFR 0.29j, authorized OIG special agents to perform law enforcement functions as Special Deputy United States Marshals. Section 812 of the Homeland Security Act, Pub. L. 107–296, § 812, 116 Stat. 2135, 2222 (Nov. 25, 2002), amending section 6(e)

of the Inspector General Act of 1978, provided that the Attorney General may, through the adoption of guidelines, authorize Special Agents under the direction of an Assistant Inspector General for Investigations to exercise the following law enforcement powers:

(A) To carry a firearm while engaged in official duties or as expressly authorized by the Attorney General;

(B) to make arrests, while engaged in official duties or as expressly authorized by the Attorney General, (i) for federal offenses committed in the officer’s presence, or

(ii) for any federal felony if the agent has reasonable grounds to believe that the person has committed or is committing such felony; and

(C) to seek and execute federal arrest and search warrants issued upon probable cause.

As provided for in this section, the Attorney General adopted the *Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority* (“Attorney General Guidelines” or “Guidelines”) on December 8, 2003, authorizing and governing the exercise of these authorities for Inspector General offices of the Departments and agencies specified in section 6(e)(3) of the Inspector General Act, as amended. These Guidelines are applicable to Inspectors General under section 6(e) of the Inspector General Act, as amended, and Special Agents under their authority, and apply operational guidelines and policies of the Department of Justice in the performance of criminal law enforcement investigations, e.g., the Attorney General’s Guidelines on General Crimes, Racketeering Enterprise, and Terrorism Enterprise Investigations; the Attorney General’s Guidelines Regarding the Use of Confidential Informants; and the Attorney General’s Memorandum on Procedures for Lawful, Warrantless Monitoring of Verbal Communications, as amended and updated, and any other Attorney General guidelines applicable to criminal investigative practices. The Attorney General Guidelines and these operational guidelines are subject to change.

In view of the promulgation of the Attorney General Guidelines, the Department is making conforming amendments to the existing regulations governing the Department’s OIG, in order to reflect the provisions of section 6(e) and the issuance of the Attorney General’s Guidelines.

5. This rule also amends 28 CFR 0.29(a) to reflect the current organizational structure of the OIG.

## Regulatory Matters

This rule was not published for public comment and takes effect immediately because it pertains to matters of internal agency management. See 5 U.S.C. 553(b) and (d). In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities and does not have an effect beyond the internal operating procedures of the Department.

This rule is not considered to be a “rule” within the meaning of section 3(d) of Executive Order 12866, nor does this rule have federalism implications warranting the preparation of a federalism assessment in accordance with section 6 of Executive Order 12612. This rule is not a “rule” within the meaning of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

## List of Subjects

### 28 CFR Part 0

Government employees, Delegations of authority.

### 28 CFR Part 45

Government employees, Ethics.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, Part 0 and Part 45 of title 28 of the Code of Federal Regulations are amended as follows:

## PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

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

**Authority:** 5 U.S.C. 302; 28 U.S.C. 509, 510, 515–519.

■ 2. Paragraph (a) of § 0.29 is revised to read as follows:

### § 0.29 Organization.

(a) The Office of the Inspector General consists of an immediate office, which is composed of the Inspector General, the Deputy Inspector General, and the Office of the General Counsel, and five major divisions, each headed by an Assistant Inspector General. The five OIG divisions are: Audit; Investigations; Evaluation and Inspections; Oversight and Review; and Management and Planning.

\* \* \* \* \*

■ 3. Section 0.29j is revised to read as follows:

### § 0.29j Law enforcement authority.

Subject to guidelines promulgated by the Attorney General, Special Agents of

the Office of the Inspector General are authorized to:

(a) Detect and assist in the prosecution of crimes in violation of the laws of the United States and to conduct such other investigations regarding matters that are within the jurisdiction of the Inspector General;

(b) Serve legal writs, summons, complaints, and subpoenas issued by the Inspector General or by a Federal grand jury;

(c) Receive, transport, and provide safekeeping of arrestees and other persons in the custody of the Attorney General or detained aliens;

(d) Arrest without warrant any person for an offense against the United States committed in the presence of the Special Agent or whom the Special Agent has reasonable grounds to believe has committed or is committing a felony cognizable under the laws of the United States;

(e) Seek and execute search and arrest warrants;

(f) Carry firearms while on-duty; and

(g) Carry firearms while off-duty as authorized by the Inspector General.

■ 4. Subpart G–2 is revised to read as follows:

**Subpart G–2—Office of Professional Responsibility**

Sec.

0.39 Office of Professional Responsibility.

0.39a Functions.

0.39b Confidentiality of information.

0.39c Relationship to other departmental units.

**Subpart G–2—Office of Professional Responsibility**

**§ 0.39 Office of Professional Responsibility.**

The Office of Professional Responsibility (DOJ–OPR) shall be headed by a Counsel, who shall be appointed by the Attorney General and subject to the general supervision and direction of the Attorney General or, whenever appropriate, the Deputy Attorney General.

**§ 0.39a Functions.**

(a) The Counsel shall:

(1) Receive, review, investigate and refer for appropriate action allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice, as well as allegations of misconduct by law enforcement personnel when such allegations are related to allegations of attorney misconduct within the jurisdiction of DOJ–OPR;

(2) Receive, review, investigate and refer for appropriate action;

(i) Any allegation of reprisal against an employee or applicant who discloses information pursuant to paragraph (a)(1) of this section; and

(ii) Allegations of reprisal taken against any Federal Bureau of Investigation employee for disclosing information pursuant to 28 CFR 27.1;

(3) Report to the responsible Department official the results of inquiries and investigations arising under paragraphs (a)(1) and (2) of this section, and, when appropriate, make recommendations for disciplinary and other corrective action;

(4) Refer any allegation not arising under paragraphs (a)(1) or (2) of this section to the Inspector General or another appropriate Department official;

(5) Notify any person who has made allegations pursuant to paragraphs (a)(1) or (2) of this section and any person who was the subject of such allegations of the completion and, as appropriate, the results of, any inquiry or investigation undertaken, where such notification is permitted by law and consistent with the law enforcement interests of the Department;

(6) Engage in liaison with the bar disciplinary authorities of the states, territories, and the District of Columbia with respect to professional misconduct matters;

(7) Submit an annual report to the Attorney General summarizing the work of the Office;

(8) Submit recommendations to the Attorney General and the Deputy Attorney General on the need for changes in policies and procedures that become evident during the course of the Counsel's inquiries and investigations;

(9) Review proposals from Department employees to refer to appropriate licensing authorities apparent professional misconduct by attorneys outside the Department, and make such referrals where warranted, except that referrals made pursuant to 8 CFR 1003.106(d) do not require the Counsel's review; and

(10) Perform any other responsibilities assigned by the Attorney General or the Deputy Attorney General.

(b) For the purpose of paragraph (a)(2)(i) of this section, any disclosure by an employee or applicant to a supervisor, Professional Responsibility Officer, the Office of Professional Responsibility, the Office of the Inspector General, the Executive Office for United States Attorneys, or other appropriate individual or component shall constitute disclosure to the Attorney General or the Counsel.

**§ 0.39b Confidentiality of information.**

The Counsel shall not disclose the identity of any person submitting an allegation of misconduct or reprisal pursuant to 28 CFR 0.39a(a)(1) or (2) unless the person consents to the disclosure of his identity or the disclosure is necessary to carry out the authority of the Office of Professional Responsibility, including conducting an investigation or referring the allegation to another component.

**§ 0.39c Relationship to other departmental units.**

(a) Primary responsibility for assuring the maintenance of the highest standards of professional responsibility by Department employees rests with the heads of the offices, divisions, bureaus, and boards of the Department.

(b) The heads of the offices, divisions, bureaus, and boards shall assure that any judicial finding of misconduct or serious judicial criticism relating to the duties described in § 0.39(a)(1), or any nonfrivolous allegation of serious misconduct concerning an employee in their component and relating to those duties, is reported to the Counsel.

(c) The heads of the offices, divisions, bureaus, and boards shall provide information and assistance requested by the Counsel in connection with any inquiries or investigations conducted by the Counsel or by the Counsel's staff. As set forth in part 45, all Department personnel, including the subject(s) of any inquiry or investigation, shall cooperate fully with any investigation conducted by the Counsel or his designee.

**PART 45—EMPLOYEE RESPONSIBILITIES**

■ 5. The authority citation for part 45 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 7301, App. 3, 6; 18 U.S.C. 207; 28 U.S.C. 503, 528; DOJ Order 1735.1.

■ 6. Part 45 is amended by adding new §§ 45.11, 45.12, and 45.13, to read as follows:

**§ 45.11 Reporting to the Office of the Inspector General.**

Department of Justice employees have a duty to, and shall, report to the Department of Justice Office of the Inspector General, or to their supervisor or their component's internal affairs office for referral to the Office of the Inspector General:

(a) Any allegation of waste, fraud, or abuse in a Department program or activity;

(b) Any allegation of criminal or serious administrative misconduct on

the part of a Department employee (except those allegations of misconduct that are required to be reported to the Department of Justice Office of Professional Responsibility pursuant to § 45.12); and

(c) Any investigation of allegations of criminal misconduct against any Department employee.

**§ 45.12 Reporting to the Department of Justice Office of Professional Responsibility.**

Department employees have a duty to, and shall, report to the Department of Justice Office of Professional Responsibility (DOJ-OPR), or to their supervisor, or their component's internal affairs office for referral to DOJ-OPR, any allegations of misconduct by a Department attorney that relate to the exercise of the attorney's authority to investigate, litigate or provide legal advice, as well as allegations of misconduct by law enforcement personnel when such allegations are related to allegations of attorney misconduct within the jurisdiction of DOJ-OPR.

**§ 45.13 Duty to cooperate in an official investigation.**

Department employees have a duty to, and shall, cooperate fully with the Office of the Inspector General and Office of Professional Responsibility, and shall respond to questions posed during the course of an investigation upon being informed that their statement will not be used to incriminate them in a criminal proceeding. Refusal to cooperate could lead to disciplinary action.

Dated: September 11, 2006.

**Alberto R. Gonzales,**

*Attorney General.*

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**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 4022 and 4044**

**Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in

Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in October 2006. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**DATES:** Effective October 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

This amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during October 2006, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during October 2006, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during October 2006.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 6.00 percent for the first 20 years following the valuation date and 4.75 percent

thereafter. These interest assumptions represent a decrease (from those in effect for September 2006) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged. These interest assumptions reflect the PBGC's recently updated mortality assumptions, which are effective for terminations on or after January 1, 2006. See the PBGC's final rule published December 2, 2005 (70 FR 72205), which is available at <http://www.pbgc.gov/docs/05-23554.pdf>. Because the updated mortality assumptions reflect improvements in mortality, these interest assumptions are higher than they would have been using the old mortality assumptions.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for September 2006) of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during October 2006, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.