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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209-AA07

Executive Agency Ethics Training Programs Regulation Amendments

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule.

SUMMARY: In this interim rule, OGE has rewritten its executive branch agency ethics training regulation in plain language. This rule also addresses the comments OGE received regarding the two substantive changes made by the previous interim training regulation.

The training regulation requires that covered employees who file public financial disclosure reports receive verbal ethics training every year presented by a qualified instructor who is available to respond to ethics questions. This rule clarifies that the instructor is not required to be at the training site. This rule, like the previous interim rule, also permits agencies to meet the annual ethics training requirement for all other covered employees with annual written training, provided these employees receive verbal ethics training at least one out of every three calendar years. Although the substance of this rule is nearly identical to the previous interim rule, the rule does make certain minor changes as a result of comments received by OGE.

DATES: This interim regulation is effective March 15, 2000. Comments by agencies and the public are invited and are due by May 15, 2000.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Arielle H. Grill. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov. For E-mail messages, the subject line should

include the following reference—"Comments on the Executive Agency Ethics Training Programs Regulation Amendments."

FOR FURTHER INFORMATION CONTACT: Arielle H. Grill, Attorney-Advisor, Office of the General Counsel and Legal Policy, Office of Government Ethics; telephone: 202-208-8000, extension 1219; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 1997, OGE published an interim rule amending subpart G of 5 CFR part 2638, "Executive Agency Ethics Training Programs" (Training Regulation). See 62 FR 11307-11314. Minor corrections to the rule were issued on March 19, 1997, 62 FR 13213, and March 27, 1997, 62 FR 14737. Most provisions of the rule became effective on June 10, 1997. Interested persons were asked to submit comments by April 11, 1997.

The most significant revisions that the 1997 interim rule amendments made to the Training Regulation were in the area of annual ethics training to be provided to certain covered employees. The prior version of the Training Regulation required agencies to provide annual verbal ethics training to all covered employees. However, the interim rule amendments permitted agencies to fulfill this requirement for most covered employees by means of written training, provided that the employees receive verbal training at least once every three calendar years. The interim rule did require agencies to continue to provide annual verbal training to employees who file public financial disclosure forms ("public filers"). On January 1, 1998, agencies became subject to a further requirement that a qualified instructor be present during and immediately following the annual ethics training provided to public filers.

As stated in the preamble to the 1997 interim rule amendments, the changes made by the amendments were not intended to enable agencies to diminish the resources that they devote to ethics training. The interim rule was structured to minimize the impact of OGE-mandated training, focusing more intensive training on those employees in sensitive positions (public filers) while ensuring that all executive branch employees receive sufficient training to

enable them to understand the ethical responsibilities concomitant with their Government positions. By lessening the level of OGE-mandated verbal ethics training, agencies are able to reallocate their ethics training resources for use in other parts of their ethics training programs.

II. Plain Language Modifications

Executive Order 12866 and the President's Memorandum of June 1, 1998 require Federal agencies to write all new rules in plain language. In keeping with the spirit of the President's Memorandum, we have attempted to rewrite this new interim rule in plain language by: organizing the material more logically; using shorter sentences; eliminating unnecessary technical language; stating the rule's requirements clearly; and using tables to summarize information. We invite your comments as to whether this interim rule is easier to understand and how we could further improve its clarity. This plain language version of the previous interim rule makes only nonsubstantive changes to the rule. The following discussion summarizes some of the more significant changes that the plain language revision has made.

This interim rule is organized differently than the previous rule. We have avoided numbering subordinate paragraphs past the second level (except for the rows of the helpful tables at new § 2638.706(c)). Thus, this rule has a § 2638.703(a)(1) but not a § 2638.703(a)(1)(i) or a § 2638.703(a)(1)(i)(A). We believe this change makes it easier to follow the rule. We have, however, added two sections to the rule. One new section (§ 2638.702) provides definitions of terms used throughout this subpart. The other new section is a result of our dividing the annual training requirement into two sections: one for public filers (§ 2638.704) and one for all other covered employees (§ 2638.705). Because the training requirements are different for these two groups of employees, we believe this format clarifies the different requirements for each.

While the previous interim rule referred to verbal and written ethics "briefings," this rule uses the term ethics "training." This substitution was made because briefing is a more technical, legal term and training is a

more commonly used and understood term.

We have deleted the discussion in existing § 2638.701 of the particular provisions of law that are to be covered by ethics training. We believe that this information is redundant as it is also stated in new § 2638.704(b) which addresses the content of ethics training. Section 2638.704(b)(5) (and § 2638.703(b)) requires that the agency provide covered employees with the office addresses and telephone numbers of the Designated Agency Ethics Official (DAEO) and other agency ethics officials. Although not required, the E-mail addresses of such persons may also be given to covered employees.

This interim rule does not contain the discussion of the responsibilities of the DAEO found in previous § 2638.702(a) and (b). The DAEO's responsibilities are clearly delineated earlier in part 2638 at § 2638.203. Section 2638.203(a)(3) states that the DAEO must initiate and maintain an ethics education and training program. We believe this section requires the DAEO to be responsible for all aspects of the agency's ethics training program. Aside from the discussion of the DAEO's duties, we are moving the remaining material (concerning the agency's written training plan) from the existing § 2638.702(c) to the new rule's § 2638.706. While the requirements for the agency's written training plan are identical in this rule, we have provided tables in § 2638.706(c)(2)–(c)(4) to assist agencies in determining the number of employees they plan to train in each upcoming calendar year.

We are eliminating the statement in existing § 2638.702(c) that, in preparing its written training plan, an agency must "coordinate with OGE where necessary." We believe that wording is unnecessary because agencies are always welcome to consult with OGE on any ethics-related matter, regardless of a published regulation.

We have renamed the person who is authorized to conduct ethics training. The previous interim rule referred to that person as a "qualified individual." This rule refers to that person as a "qualified instructor" in order to make it clearer that the person must be qualified to teach, or prepare the material for, ethics training courses. In addition, this interim rule requires that the qualified instructor be "available" during and after the training provided to public filers. See § 2638.704(d). The previous interim rule required the instructor's "presence," which caused confusion as to whether the instructor must be physically present at the training site. Use of the term "available"

clarifies that the instructor's physical presence is not required. As explained in the examples following § 2638.704(d), an instructor is "available" if he or she is connected to the training site through a video or telephone link.

The following distribution table shows where the material from the previous interim rule can be found in this new interim rule. It also indicates the sections from the previous rule that have been removed, as discussed above.

Old section	New section
2638.701 (1st sentence).	Removed.
2638.701 (2nd sentence).	2638.701.
2638.701 (3rd sentence).	2638.702 (<i>Employee definition</i>).
2638.702 introductory text.	Removed.
2638.702(a)	Removed.
2638.702(b)(1st sentence).	Removed.
2638.702(b)(2nd sentence).	2638.704(d).
2638.702(c)	2638.706.
2638.703	2638.703.
2638.704(a)–(b)	2638.704(a); 2638.705(a).
2638.704(c)	2638.704(b); 2638.705(b).
2638.704(d)(1) ...	2638.704(c); 2638.705(c).
2638.704(d)(2)(i)	2638.704(c).
2638.704(d)(2)(ii) (& Examples 1–3 to ¶ (d)(2)(iii)).	2638.704(d) & Examples 1–3 to ¶ (d).
.....	2638.704(d)(2)(iii) (& Example 1 to ¶ (d)(2)(iii)(A))
2638.704(d)(3)(i)	2638.704(d)(e) (& Example to ¶ (e)(1)).
2638.704(d)(3)(ii)	2638.705(c)(2).
2638.704(d)(3)(iii).	2638.705(c)(1).
.....	2638.705(d).
.....	2638.702 (new, except for <i>Employee definition</i>).

III. Analysis of the Comments Received on the Prior Interim Rule

The Office of Government Ethics received 15 comments in response to the 1997 interim rule amendments. Of these 15 comments, 13 were from Federal executive branch agencies, one was from an individual executive branch employee, and one was from an interagency group of ethics officials. Generally, the comments received by OGE were in favor of the changes made by the interim rule amendments. In particular, the comments supported the provision permitting agencies to fulfill the annual ethics training requirement for most covered employees through the use of written ethics training in two of any three calendar years. The Office of Government Ethics also received several positive responses to the deletion of "procurement officials" (no longer a

defined category in light of changes to the procurement integrity law) from the categories of covered employees. After careful consideration of the comments received, OGE has decided to retain the interim rule amendments with minor changes. We do, however, invite further suggestions as to improvements in the ethics training program. This new interim rule will give agencies an additional opportunity to make such suggestions, as well as to comment on the new plain language format of the rule.

An analysis of the comments received follows.

Verbal Ethics Training for Public Filers

In the preamble to the interim rule amendments, OGE specifically invited comment as to whether it is appropriate to have stricter training requirements for public filers than for other covered employees. One agency indicated that it felt the distinction was unnecessary because, generally, public filers better understand and are more sensitive to their ethical responsibilities than other employees. However, two other agencies and the interagency group of ethics officials endorsed the annual verbal training requirement for public filers. After considering these views, and for the reasons originally stated in the preamble to the interim rule amendments at 62 FR 11308, we have decided to retain the requirement that public filers receive verbal training every year.

The provision of the 1997 interim rule amendments that generated the greatest amount of comment was the requirement that agencies, effective January 1, 1998, have a qualified instructor "present" during and immediately following the annual training provided to public filers. Nine of the commenters addressed this section, with comments ranging from supportive to sharply critical. For the reasons given below, OGE has decided to retain the "presence" requirement. Notably, this interim rule substitutes the term "available" for the previous rule's term "present." See new § 2638.704(d).

New § 2638.704(d), which states that a qualified instructor must be available during and immediately after verbal training, does not require the instructor's physical presence at the training session. As noted, OGE has replaced the word "present" with "available" to clarify that the instructor need not be physically present at the training site. It is sufficient if some mode of telecommunications enables the instructor to answer employees' questions during and after the training. As in the existing regulation, the

examples that follow new § 2638.704(d) illustrate the flexibility of this provision. Examples 1 and 2 show that a qualified instructor is available when the public filer receiving the ethics training has access to the instructor through a video conference link or telephone line. These examples demonstrate how agencies may take advantage of existing and new communication technologies that provide greater access and can substitute for actual physical presence.

Two commenters indicated that providing employees with a set time to contact a qualified instructor should satisfy the requirement that a qualified instructor be available. After careful consideration, OGE has not adopted this proposal. The delay in time between the receipt of the training and the answer to the employee's question could easily result in a lost educational opportunity. Also, the use of a separate set time for contacting a qualified instructor may discourage employees from contacting agency ethics officials at other times. The primary purpose of the Training Regulation is not necessarily to provide agency employees with a comprehensive knowledge of all of the conduct-related laws and regulations that govern them. Rather, the rule is intended to create an awareness of those laws and to introduce the point of contact where employees can obtain further ethics advice. Agency employees are, therefore, given the names and telephone numbers of their ethics officials at the start of their employment. See new § 2638.703(b). Covered employees must receive annual updates of this information as part of their annual ethics training. See new §§ 2638.704(b)(5); 2638.705(b).

One agency, and one individual from that agency, stated that the previous interim rule amendments undermine the agency's use of computers for annual training. The agency felt that the advantage of computer-based training, such as the computer game that it had developed, lies in its flexibility. The agency pointed out that its game makes ethics training available at the employee's convenience, including off-duty hours and weekends, and can easily be distributed worldwide. Having developed the game with OGE's assistance, the agency felt that the usefulness of the game was undercut by the interim rule amendments because the planned implementation of the game would not meet the requirements of the regulation. The agency therefore urged that the presence requirement be deleted or, at a minimum, changed to once every three to five years. The individual submitting comments, while

acknowledging that an agency can waive the requirement of a qualified instructor in certain situations, stated that the main problem with the requirement would be the loss of flexibility in having to complete the training at a set time, rather than at the employee's convenience.

The points articulated by these two commenters concern the verbal training that agencies must provide to *public filers*. In the case of a covered employee other than a public filer, the computer game developed by the agency should meet the requirements of new § 2638.705(c)(1) which does not require that a qualified instructor be available. Computer-based methods of training are specifically mentioned as fulfilling the requirement for verbal training in new § 2638.705(c)(1). Thus, the game (and similar computer-based training) remains an excellent tool to fulfill the verbal ethics training requirement for the approximately 93% of covered employees who are not public filers. Similarly, the use of computer-based training is also an appropriate way for agencies to provide verbal training to the approximately 7% of covered employees who are public filers, provided that a qualified instructor is available to answer questions. New § 2638.704(c)(2) specifically lists computer presentation as a means for fulfilling the verbal training requirement for public filers. The two commenters, however, felt that making a qualified instructor available to public filers undermines the primary benefit of the computer game: its flexibility. For the following reasons, we disagree.

First, as stated above, ethics training is most effective when employees are provided with spontaneous answers to their questions. A delay in time between question and answer could result in an employee forgetting to ask the question and could discourage the employee from taking the initiative to contact the instructor. In keeping with this philosophy, an agency could use a computer game to provide public filers with training through their workstation computers. Employees could be given a specific time reserved for accessing the computer game when a qualified instructor is standing by to respond to any questions concerning the game or other ethics issues. This specific scheduled time would not prevent the public filer from accessing the computer game at any other time but would ensure that the public filer receives the required one hour of official duty time for the training. The official duty time requirement is a long-standing one, having been in existence from the inception of the Training Regulation.

Since the 1992 promulgation of the original Training Regulation final rule, OGE program reviews have not indicated that agencies find it difficult to fulfill this requirement.

One commenter urged OGE to defer to an agency's determination as to which circumstances make it impractical to provide verbal training with a qualified instructor available. This interim rule retains, at § 2638.704(e)(1) (for public filers) and § 2638.705(d)(1) (for other covered employees), the Training Regulation's long-standing exceptions providing the DAEO at each agency with the authority to use verbal training without a qualified instructor or to use only written training. Under these exceptions, where the DAEO or his or her designee makes a written determination that circumstances make it impractical to meet the verbal training requirement for a covered employee, a qualified instructor need not be available (for public filers) and written training can be provided for any covered employees (including public filers) in any year. The Office of Government Ethics realizes that each agency knows best the practical issues that it faces in providing training and, thus, OGE does give due deference to an agency's written determination that verbal training is impractical.

The exception at § 2638.704(e)(1) pertains to the comments from two agencies which have widely dispersed groups of public filers. One of these agencies expressed concern that some public filers may be unable to attend training at a group session and that makeup sessions would require significant resources because the entire ethics staff is centrally located. The other agency stated that it would be very difficult for them to establish even a scheduled telephone link. Where distance or difference in time zones makes such scheduling impractical, as in these cases, the agency has sufficient grounds to make a written determination waiving the requirement that a qualified instructor be available.

Another commenter felt that OGE should provide a specific exception in the regulation for training that takes place outside of core duty hours or outside of the continental United States, thus saving DAEOs the necessity of making individual written determinations in these situations. No similar comment was received and no other agency has expressed this concern during OGE's reviews of agency ethics programs. We note that the exceptions in §§ 2638.704(e) and 2638.705(d) do give DAEOs a fair amount of flexibility because DAEOs are permitted to make a single written determination for

multiple employees. For these reasons, OGE did not adopt this recommendation.

Annual Ethics Training for Other Covered Employees

For covered employees who are not public filers, these interim rule amendments continue to enable agencies to meet the annual training requirement through verbal training once every three calendar years (the "one in three" rule). Unlike the rule for public filers, there is no requirement that a qualified instructor be available. For those calendar years where eligible covered employees do not receive verbal training, written training is required. Five commenters commended these changes for providing agencies with greater freedom to devote resources to desired ethics training goals. On the other hand, one commenter felt that the 1997 interim rule amendments went too far in liberalizing the ethics training requirements. This commenter stated that annual verbal training demonstrates the importance of the ethics program to employees and the one in three rule would diminish the importance of the ethics program (and possibly its resources) for the covered employees receiving written training.

The Office of Government Ethics has retained this provision in this new interim rule. As noted earlier, the intent of the prior interim rule was not to diminish the emphasis or resources of agency ethics training programs. The intent was instead to reduce the level of OGE-mandated verbal ethics training to better allow each agency to tailor its training program to its specific needs. Because the requirements are minimum standards, agencies are encouraged to go beyond them where they believe it is beneficial to their programs. In such cases, agencies can provide verbal training for all covered employees each year. As stated in the preamble to the interim rule amendments, OGE will reconsider the one in three rule if it finds that the result is a diminution of resources devoted to the ethics training program.

One commenter stated that agencies would be unable to keep track of which covered employees had received verbal training within the past three years. In reviewing this comment, OGE considered its reviews of agency ethics programs performed since the effective date of the 1997 interim rule amendments. These program reviews have not shown that agencies have had difficulty tracking their employees' training. An agency experiencing such tracking problems could simply provide verbal training to all covered employees

every third year and provide written training to employees (other than public filers) in the other two calendar years. For these reasons, OGE has decided to retain this requirement in this new interim rule.

Two commenters requested that OGE allow the written ethics training that they gave employees, other than public filers, before June 10, 1997 (the effective date of the 1997 interim rule amendments) to satisfy the verbal training requirement for calendar year 1997. We note that it is generally unwise for an agency to change operating policies or procedures based upon a rule that is not yet effective. Indeed, OGE purposely delayed the effective date of the 1997 interim rule amendments for 90 days so that we could evaluate comments received from agencies prior to the effective date and determine whether it would be necessary to amend or cancel the interim rule amendments. The issue raised by these commenters is moot, however, since any opportunity to correct a problem in its 1997 annual ethics training expired on January 1, 1998.

On a similar point, OGE notes that verbal training provided under the former Training Regulation does count for the purposes of the one in three rule at new § 2638.705(c)(1). Thus, agencies who gave all covered employees verbal training in 1997 would not have to provide verbal training again for covered employees (other than public filers) until 2000.

Other Issues

Two commenters indicated their concerns with the requirement in § 2638.702(c) (new § 2638.706) that agencies develop a written training plan each year. Prior to the 1997 interim rule amendments, agencies were required to file these plans annually with OGE. The interim rule deleted this requirement and modified the information required in the plan, including the addition of a narrative description of the agency's annual ethics training. One agency indicated its opinion that OGE should move even farther to convert the annual training plan to a narrative-based document or, alternatively, that OGE should place no additional requirements on agencies but should allow them to develop their own plans in keeping with their internal needs. Although OGE may further modify the information required in the written plan based upon future experience, we have elected not to permit a mere narration. We believe that, to run an effective ethics training program, agencies need to plan ahead. The information required in the written

training plan should serve as a useful tool to agencies as they prepare for each training cycle. The other comment regarding the written training plan argued that the plan served no purpose and should not be required. For the reasons given above, OGE does not agree with this comment. Furthermore, section 301(c) of Executive Order 12674, as modified by Executive Order 12731, requires agencies to develop written training plans.

Two commenters requested that OGE allow agencies to satisfy both the requirements for initial ethics orientation and annual ethics training with one training session. This comment endorsed language in the preamble to the 1997 interim rule amendments, at 62 FR 11308, stating that OGE would permit the time spent in annual verbal ethics training during the first 90 days of an employee's service to count against the one hour of official duty time required for the initial ethics orientation. As indicated in the 1997 interim rule amendments, this offset is not new. Both the original proposed and final Training Regulations, in 1990 and 1992 respectively, included a provision for agencies to partially or completely offset the official duty time requirement for the initial ethics orientation by the amount of official duty time spent in annual verbal ethics training. See 55 FR 38335, 38337 (September 18, 1990) and 57 FR 11886, 11888, 11890, 11891 (April 7, 1992). The Office of Government Ethics believes that agencies should have an incentive to provide verbal training to new employees even though such training is not required. Therefore, whether the verbal training is labeled an initial ethics orientation or annual ethics training, it will count as both if it meets the requirements of both. Similarly, if a written initial ethics orientation is modified slightly so that it meets the requirements for written annual training, it will count as both.

Finally, the previous interim rule amendments, at § 2638.704(d)(3)(iii)(B), retained the exception from the prior Training Regulation allowing written training alone for special Government employees (SGE) who work fewer than 60 days in a calendar year. This exception (now at new § 2638.705(d)(2)) permits agencies to meet the annual training requirement for these SGEs through written training only. This exception is included only in the section dealing with annual training for covered employees other than public filers since SGEs who work fewer than 60 days in a calendar year are not required to file public financial

disclosure reports. See 5 CFR 2634.201(a) and 2634.204.

Because SGEs typically serve limited terms of employment and because the interim rule amendments permit agencies to meet the annual training requirement for all covered employees (other than public filers) through written training for two of any three years, OGE specifically requested in the 1997 interim rule amendments that agencies inform us if they have SGEs who served for three or more years. If there were no such long-term SGEs, we realized this exception would be unnecessary. Three agencies responded that they have SGEs who serve for terms of three or more years. Accordingly, OGE has retained the exception in this interim rule. One commenter indicated that the language in the exception should be changed to "60 or fewer days in a calendar year" to more precisely track the language in 5 CFR part 2634. OGE has adopted this recommendation in the interim rule. See new § 2638.705(d)(2).

The Office of Government Ethics recently completed an agency survey to determine: whether agencies are aware of the changes to the Training Regulation made by the 1997 interim rule (the one in three rule and the fact that a qualified instructor's physical presence is not required); whether agencies have implemented the flexibility that the one in three rule allows; and whether the rule is effective. The survey was conducted as part of the regularly scheduled ethics program reviews performed in 57 agencies from December 1997 through November 1998. Sixty-one percent of the ethics officials said they have taken, or would be taking, advantage of the flexibility offered by the interim amendments. Eighty-nine percent of the ethics officials surveyed were satisfied that the interim rule amendments allowed their agencies to allocate ethics training resources in a more flexible and efficient manner and seventy-seven percent were satisfied with the effects of the changes on their agency's ethics training program. These officials believed that using written training allowed more time for ethics counseling, reduced the workload of the ethics office, and increased the number of topics covered by the training materials.

The Office of Government Ethics invites further suggestions as to overall improvements in the ethics training program, as well as comments regarding the new plain language format of the Training Regulation.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to sections 553(b) and (d) of title 5 of the United States Code, I find good cause for waiving the general notice of proposed rulemaking. Because the plain language changes made by these interim rule amendments to the Training Regulation simply clarify the existing regulation, there is no need to solicit comments in advance. Moreover, this rule provides for a 90-day comment period. All interested persons are invited to submit written comments to OGE on these interim rule amendments. The Office of Government Ethics will review all comments received and consider any modifications which appear warranted in adopting a final rule on this matter.

Executive Order 12866

In promulgating this interim rule amending the executive branchwide Government ethics training regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this interim amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal executive branch agencies and their employees.

Paperwork Reduction Act

As Director of the Office of Government Ethics, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this interim rule because it does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2638

Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: November 5, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending subpart G of 5 CFR part 2638 as follows:

PART 2638—OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS PROGRAM RESPONSIBILITIES

1. The authority citation for part 2638 continues to read as follows:

2. Subpart G of part 2638 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart G—Executive Agency Ethics Training Programs

Sec.

2638.701 Overview.

2638.702 Definitions.

2638.703 Initial agency ethics orientation for all employees.

2638.704 Annual ethics training for public filers.

2638.705 Annual ethics training for other employees.

2638.706 Agency's written plan for annual ethics training.

Subpart G—Executive Agency Ethics Training Programs

§ 2638.701 Overview.

Each agency must have an ethics training program to teach employees about ethics laws and rules and to tell them where to go for ethics advice. The training program must include, at least, an initial agency ethics orientation for all employees and annual ethics training for covered employees.

§ 2638.702 Definitions.

For purposes of this subpart:

Agency supplemental standards means those regulations published by an agency in concurrence with the Office of Government Ethics under 5 CFR 2635.105.

Employee includes officers of the uniformed services and special Government employees, as defined in 18 U.S.C. 202(a).

Federal conflict of interest statutes means 18 U.S.C. 202–203, 205, and 207–209.

Principles means the Principles of Ethical Conduct, Part I of Executive Order 12674, as modified by Executive Order 12731.

Standards means the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635.

§ 2638.703 Initial agency ethics orientation for all employees.

Within 90 days from the time an employee begins work for an agency, the agency must do the following:

(a) *Ethics materials.* The agency must give the employee:

(1) The Standards and any agency supplemental standards to keep or review; or

(2) Summaries of the Standards, any agency supplemental standards, and the Principles to keep.

Note to paragraph (a): If the agency does not give the employee the Standards and any agency supplemental standards to keep, the complete text of both must be readily available in the employee's immediate office area.

(b) *Contact persons.* The agency must give the employee the names, titles, and office addresses and telephone numbers of the designated agency ethics official and other agency officials available to advise the employee on ethics issues.

(c) *One hour to review.* The agency must give the employee at least one hour of official duty time to review the items described above. This one-hour requirement may be reduced by any amount of time the employee receives verbal ethics training in the same 90-day period.

§ 2638.704 Annual ethics training for public filers.

(a) *Covered employees.* Each calendar year, agencies must give verbal ethics training to employees who are required by 5 CFR part 2634 to file public financial disclosure reports.

(b) *Content of training.* Agencies are encouraged to vary the content of verbal training from year to year but the training must include, at least, a review of:

(1) The Principles;

(2) The Standards;

(3) Any agency supplemental standards;

(4) The Federal conflict of interest statutes; and

(5) The names, titles, and office addresses and telephone numbers of the designated agency ethics official and other agency ethics officials available to advise the employee on ethics issues.

(c) *Length and presentation of training.* Employees must be given at least one hour of official duty time for verbal training. The training must be:

(1) Presented by a qualified instructor; or

(2) Prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape.

(d) *Availability of qualified instructor.* A qualified instructor must be available during and immediately after the training. Qualified instructors are:

(1) The designated agency ethics official;

(2) The alternate agency ethics official;

(3) A deputy agency ethics official;

(4) Employees of the Office of Government Ethics (OGE) designated by OGE; and

(5) Persons whom the designated agency ethics official (or his or her designee) determines are qualified to respond to ethics questions raised during the training.

Example 1 to paragraph (d): An agency provides annual ethics training for public filers in a regional office by establishing a video conference link between the regional office and a qualified instructor in the headquarters office. The video link provides for direct and immediate communication between the qualified instructor and the employees receiving the training. Even though the qualified instructor is not physically located in the room where the training occurs, the qualified instructor is available.

Example 2 to paragraph (d): The agency described in the preceding example provides videotaped training instead of training through a video conference link. The employees viewing the videotape are provided with a telephone at the training site and the telephone number of a qualified instructor who is standing by during and immediately after the training to answer any questions. Under these circumstances, a qualified instructor is available.

Example 3 to paragraph (d): In the preceding example, if no telephone had been provided at the training site or if a qualified instructor was not standing by to respond to any questions raised, there would not be a qualified instructor available. Merely providing the phone number of the qualified instructor would not satisfy the requirement that a qualified instructor be available.

(e) *Exceptions.* Verbal training without a qualified instructor available or written training prepared by a qualified instructor will satisfy the verbal training requirement for a public filer (or group of public filers) if one hour of official duty time is provided for the training and:

(1) The designated agency ethics official (or his or her designee) makes a written determination that it would be impractical to provide verbal training with a qualified instructor available; or

(2) The employee is a special Government employee.

Example to paragraph (e)(1): The only public filer in the American Embassy in Ulan Bator, Mongolia is the Ambassador. Because of the difference in time zones and the uncertainty of the Ambassador's schedule, the designated agency ethics official for the

State Department is justified in making a written determination that it would be impractical to provide the Ambassador with verbal training. In this case, the Ambassador may receive written training prepared by a qualified instructor.

§ 2638.705 Annual ethics training for other employees.

(a) *Covered employees.* Each calendar year, agencies must train the following employees:

(1) Employees appointed by the President;

(2) Employees of the Executive Office of the President;

(3) Employees defined as confidential filers in 5 CFR 2634.904;

(4) Employees designated by their agency under 5 CFR 2634.601(b) to file confidential financial disclosure reports;

(5) Contracting officers, as defined in 41 U.S.C. 423(f)(5); and

(6) Other employees designated by the head of the agency or his or her designee based on their official duties.

Note to paragraph (a): Employees described above who are also public filers must receive ethics training as provided in § 2638.704.

(b) *Content of training.* The requirements for the contents of annual training are the same as the requirements in § 2638.704(b).

(c) *Length and presentation of training.* The training for covered employees must consist of:

(1) A minimum of one hour of official duty time for verbal training at least once every three years. The verbal training must be presented by a qualified instructor or prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape; and

(2) An amount of official duty time the agency determines is sufficient for written training in the years in which the employee does not receive verbal training. The written training must be prepared by a qualified instructor. The employee's initial ethics orientation may satisfy the written training requirement for the same calendar year.

(d) *Exceptions.* Written ethics training prepared by a qualified instructor will satisfy the verbal training requirement for a covered employee (or group of covered employees) if sufficient official duty time is provided for the training and:

(1) The designated agency ethics official (or his or her designee) makes a written determination that verbal training would be impractical;

(2) The employee is a special Government employee expected to work 60 or fewer days in a calendar year;

(3) The employee is an officer in the uniformed services serving on active

duty for 30 or fewer consecutive days;
or

(4) The employee is designated under paragraph (a)(6) of this section to receive training.

§ 2638.706 Agency's written plan for annual ethics training.

(a) The designated agency ethics official (or his or her designee) is responsible for directing the agency's ethics training program. The designated agency ethics official (or his or her designee) must develop a written plan each year for the agency's annual training program.

(b) The written plan must be completed by the beginning of each calendar year.

(c) The written plan must contain:

(1) A brief description of the agency's annual training.

(2) Estimates of the number of employees who will receive verbal training according to the following table:

Employees who will receive verbal training	Number
(i) Public filers.	
(ii) Employees other than public filers.	

(3) An estimate of the number of employees who will receive written training according to the following table:

Employees who will receive written training	Number
Employees other than public filers who will receive training under § 2638.705(c)(2).	

(4) Estimates of the number of employees who will receive written training instead of verbal training according to the following table:

Employees who will receive written training instead of verbal training	Number
(i) Public filers who qualify for the exception in § 2638.704(e)(1).	
(ii) Public filers who qualify for the exception in § 2638.704(e)(2).	
(iii) Employees other than public filers who qualify for the exception in § 2638.705(d)(1).	
(iv) Employees other than public filers who qualify for the exception in § 2638.705(d)(2).	
(v) Employees other than public filers who qualify for the exception in § 2638.705(d)(3).	
(vi) Employees other than public filers who qualify for the exception in § 2638.705(d)(4).	

(d) The written plan may contain any other information that the designated agency ethics official believes will assist the Office of Government Ethics in reviewing the agency's training program.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-98-007]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this final rule specifies requirements concerning paying and collecting feeder pig and market hog assessments in the regulations. This action adds a section to the regulations which implement the Order to provide that the producer who sells the animal must remit to the National Pork Board (Board) the assessment due if the purchaser of a feeder pig or market hog fails to collect and remit the assessment.

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and 12988 and Regulatory Flexibility Act and the Paperwork Reduction Act

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an Order may file a petition with the Secretary stating that such Order, a provision of such Order or an obligation imposed in connection with such Order is not in accordance with law; and requesting a modification of the Order or an exemption from the Order. Such person is afforded the opportunity for a hearing on the petition. After the Hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which the person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the December 29, 1998, issue of "Hogs and Pigs," USDA's National Agricultural Statistics Service estimates that in 1998 the number of operations with hogs in the United States totaled 114,380. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration. The final rule imposes no new burden on the industry. The Act and Order have payment and collection provisions for assessments. This rule further specifies the responsibility for the collection and remittance of assessments on feeder pigs and market hogs in the regulations. This rule adds a section to the regulations to provide that the producer who sells the animal must remit to the Board the assessment due if the purchaser of a feeder pig or market hog fails to collect and remit the assessment.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this part have been previously approved by OMB and were assigned OMB control number 0851-0093.