

OFFICE OF GOVERNMENT ETHICS

AGENCY: Office of Government Ethics

5 CFR Part 2638

Executive Agency Ethics Training Programs

RIN 3209-AA07

55 FR 38335

Tuesday, September 18, 1990

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics (OGE) is issuing a proposed new subpart G of 5 CFR part 2638 to require executive branch agencies to maintain a program of training designed to ensure that all their employees are aware of the Federal conflict of interest statutes and principles of ethical conduct in accordance with the training provisions of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees. OGE, consistent with its authority under E.O. 12674 and the Ethics in Government Act, is issuing this proposed regulation to ensure uniformity of executive branch agency ethics training programs. As proposed, each agency's program would consist of initial ethics orientation for all of its employees coupled with an annual training requirement for specified employees in sensitive positions.

DATES: Comments must be submitted on or before November 17, 1990.

ADDRESSES: Comments should be sent to the Office of

Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917, Attention: Dr. Gilman.

FOR FURTHER INFORMATION CONTACT: Stuart Gilman or Ed Pratt, Office of Government Ethics, telephone (202/FTS) 523-5757; FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion of the Proposed Executive Agency Ethics Training Programs Regulation

Section 301(b) of Executive Order 12674 of April 12, 1989 (3 CFR 1989 Compilation, at pp. 215-218), requires that executive branch agencies ensure that all of their employees review Executive Order 12674 and regulations promulgated thereunder. In addition, section 301(c) of that order requires that executive agencies coordinate with the Office of Government Ethics in developing annual agency ethics training plans. Annual training is to include mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or non-public (confidential) financial disclosure reports, all employees who are contracting officers and procurement officials, and any other appropriate agency employees as designated by the agency head.

An education program for agency employees concerning all ethics and standards of conduct matters has been required by title IV of the Ethics in Government Act of 1978, as amended (5 U.S.C. app. IV), as implemented by 5 CFR 2638.203(a)(3) and 2638.203(b)(6). However, this is a very general requirement which executive agencies generally have not implemented by regulation with any greater specificity. Accordingly, section 301(c) of Executive Order 12674 is designed to impose greater specificity as to how the training is to be administered by executive agencies by establishing a process by which agencies will develop annual ethics training plans in coordination with the Office of Government Ethics.

To carry out the ethics training provisions of the Executive order, OGE is issuing this proposed rule to be codified at a new subpart G of 5 CFR part 2638 of its regulations. A discussion of the four sections of this new subpart, as proposed, follows.

Section 2638.701 of this proposed regulation states that it is the responsibility of each executive branch agency to maintain a program of ethics training consisting of, as a minimum, initial ethics orientation for all of its employees and annual ethics training for specified categories of its employees in sensitive positions, as provided in E.O. 12674.

Proposed @ 2638.702 of this new subpart details the ethics training responsibilities of each executive agency's designated agency ethics official, including furnishing each year to the Office of Government Ethics for its review a written plan for annual ethics training by the agency for the following calendar year and ensuring the availability of qualified individuals to provide annual ethics training.

Section 2638.703 of this subpart as proposed would require that within 60 days after the effective date of this subpart (once finally adopted), or within 60 days after each new employee enters on duty with the agency, whichever occurs later, each executive agency provide, as a minimum, each of its employees with one and a half hours of official duty time to review Part I of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees; a copy of Employee Responsibilities and conduct, subparts A, B, and C of part 735 of 5 CFR, or part 2635 of 5 CFR (when that part 2635 eventually supersedes the specified subparts of part 735); and any supplementary regulation or addendum thereto of the concerned agency. OGE notes that it is working on future standards of ethical conduct for executive branch officers and employees to be issued under E.O. 12674 and codified at 5 CFR part 2635 which will supersede, with OPM's concurrence, the specified 5 CFR part 735 subparts in OPM's chapter of title 5 (OGE was previously a part of OPM). Furthermore, OGE is also working on a replacement regulation, future 5 CFR part 2633, to current subpart D of 5 CFR part 735 on confidential (non-public) financial reporting (see @ 2638.704(b)(4) of this proposed subpart).

A minimum of one and a half official duty time hours for individual review by executive branch employees of the documents specified is reasonable, in light of the importance of having all employees familiarize themselves with ethics materials. Moreover, executive agencies may choose to offset the time devoted to individual review with ethics training and there is no requirement that the one and a half hours be contiguous.

After review, each employee will acknowledge in writing that he

or she has received the materials and has spent the appropriate amount of official duty time reviewing them, or, in the alternative, an agency official may certify for the employee. Based on an OGE agreement with the Office of Workforce Information, U.S. Office of Personnel Management, the acknowledgements and certifications will be retained as temporary records on the left hand side of each employee's Official Personnel Folder. See 5 CFR part 293, subpart C of OPM's regulations. Related instruction will be included by OPM in a future installment to the Federal Personnel Manual Supplement 293-31, Basic Personnel Records and File System.

Section 2638.704 of this proposed rule would require that, as a minimum, one and a half official duty time hours of annual ethics training be provided by each executive agency to the categories of its employees in sensitive positions as specified in section 301(c) of Executive Order 12674 beginning in the first calendar year after the calendar year in which each such employee received initial ethics orientation. The training is to be presented verbally, either in person or by recorded means, by a qualified individual and will include, as a minimum, a review of Part I of E.O. 12674; subparts A, B, and C of part 735 of 5 CFR, or, when those subparts are superseded, part 2635 of 5 CFR; any agency supplementary regulation or addendum thereto; examples relating to agency programs and operations and any ethics-related, agency-specific statute or regulatory restriction; and the conflict of interest statutes contained in chapter 11 of title 18 of the United States Code. Where it is impractical to provide training by a qualified individual, an exception can be made to allow a minimum of one and a half official duty time hours of training to be presented by means of visual or audio recording without the presence of a qualified individual, or by means of written materials.

A minimum of one and a half official duty time hours of annual training by a qualified individual is reasonable given the importance to the Government that the specified executive agency employees in sensitive positions be kept up-to-date on their ethical responsibilities. Moreover, the one and a half hours of training required annually need not be given all at once, and there is an exception, if justified, to the general requirement that there be a qualified individual providing the training.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments on this proposed regulation, to be received on or before November 17, 1990. The comments will be carefully considered and any appropriate changes will be made to the regulation as proposed before a final rule is adopted and published by OGE in the Federal Register.

Executive Order 12291

The Office of Government Ethics has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

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 proposed regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal executive branch employees. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this proposed regulation does not contain information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: August 24, 1990.

Stephen D. Potts,
Director, Office of Government Ethics

Accordingly, for reasons set forth in the preamble and pursuant to its authority under the Ethics in Government Act and E.O. 12674, the Office of Government Ethics proposes to amend 5 CFP part 2638

as follows:

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

1. The authority citation for part 2638 is revised as follows:

Authority: 5 U.S.C. appendixes III, IV; E.O. 12674, 55 FR 15159,
3 CFR 1989 Comp., p. 215.

2. A new subpart G of part 2638 is added to read as follows:

Subpart G -- Executive Agency Ethics Training Programs

Sec.

@ 2638.701 Executive agency ethics training programs; generally.

2638.702 Responsibilities of the designated agency ethics
official; review by the Office of Government Ethics.

2638.703 Initial agency ethics orientation.

2638.704 Annual agency ethics training.

Subpart G -- Executive Agency Ethics Training Programs

2638.701 Executive agency ethics training programs; generally.

Each executive branch agency shall maintain a program of training designed to ensure that all of its employees are aware of the Federal conflict of interest statutes and principles of ethical conduct. As a minimum, each agency program shall consist of the initial ethics orientation required by @ 2638.703 of this subpart and the annual ethics training required by @ 2638.704 of this subpart.

@ 2638.702 Responsibilities of the designated agency ethics
official; review by the Office of Government Ethics.

(a) It shall be the responsibility of the designated agency
ethics official of each executive agency or his or her designee to

make any written determinations provided for in this subpart and to:

(1) Direct the agency ethics training program to ensure that it meets the requirements of this subpart and that the course content is legally correct;

(2) Ensure the availability of qualified individuals to provide the annual training required by @ 2638.704 of this subpart;

(3) Furnish to the Office of Government Ethics (OGE) each year a written plan for annual ethics training by the agency for the following calendar year. The written plan shall be filed with OGE by August 31 of each year beginning in the first year in which initial ethics orientation is required by @ 2638.703 of this subpart, or within 60 days after the effective date of this subpart, whichever occurs later, and shall include:

(i) An estimate of the total number of agency employees described in @ 2638.704(b) of this subpart who must be provided annual ethics training;

(ii) An estimate of the number of agency employees to whom the annual ethics training course will be presented without the presence of a qualified individual as an exception to @ 2638.704(d)(1) of this subpart pursuant to @ 2638.704(d)(2) of this subpart, together with a description of the basis for allowing an exception;

(iii) An estimate of the number of training classes to be provided during the calendar year;

(iv) An estimate of the average class size; and

(v) Any other information that the designated agency ethics official believes will facilitate OGE's review of the agency's planned program of ethics training.

(b) Each agency's annual ethics training plan will be reviewed by OGE and any deficiencies shall be communicated in writing to the designated agency ethics official concerned by November 15, or 75 days after receipt of the agency plan, whichever occurs later.

@ 2638.703 Initial agency ethics orientation.

(a) Within 60 days after the effective date of this subpart, or within 60 days after entering on duty with the agency, whichever occurs later, each executive agency employee shall be provided by the agency with:

(1) A copy of Part I of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees, dated April 12, 1989 (3 CFR 1989 Compilation, at pp. 215-216);

(2) A copy of Employee Responsibilities and Conduct, subparts A, B, and C of part 735 of this title, or part 2635 of this subchapter (when that part 2635 eventually supersedes the specified subparts of part 735), and any supplementary regulation or addendum thereto of the concerned agency;

(3) The names, titles, office addresses, and phone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employee's ethical responsibilities; and

(4) A minimum of one and a half hours of official duty time for the purpose of permitting the employee's review of the written materials furnished pursuant to this section. Where the agency elects to provide a training course (during official duty time), the number of hours for individual review may be reduced by the time allocated to such training.

(b) Each employee, after reviewing the written materials, shall acknowledge in writing that he or she has received the materials and that a minimum of one and a half hours (or a lesser number of hours, as provided under paragraph (a)(4) of this section) of official duty time has been spent reviewing the materials. In the alternative, an agency official may certify that the employee has been provided the materials, including the appropriate amount of official duty time for reviewing them. These acknowledgements and certifications shall become temporary records in the employee's Official Personnel Folder.

@ 2638.704 Annual agency ethics training.

(a) Annual ethics training. Beginning the first calendar year after the calendar year in which he or she has received the initial training required by @ 2638.703 of this subpart, each executive agency employee identified in paragraph (b) of this section shall be provided by his or her agency a minimum of one and a half

official duty time hours of annual ethics training consisting of a course the content of which is described in paragraph (c) of this section and which is presented in accordance with the requirements of paragraph (d) of this section.

(b) Employees covered. Executive branch agency employees to whom this section applies include all of the following:

(1) Employees appointed by the President;

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

(3) Employees required to file public financial disclosure reports under part 2634 of this subchapter;

(4) Employees required to file confidential (non-public) financial disclosure reports under subpart D of part 735 of this title, or part 2633 of this subchapter (when that part 2633 eventually supersedes subpart D of part 735), and any implementing agency regulations;

(5) Contracting officers within the meaning of 41 U.S.C. 423(p)(4);

(6) Procurement officials within the meaning of 41 U.S.C. 423(p)(3); and

(7) Other employees designated by the head of the agency or his or her designee based on a determination that such training is desirable in view of their particular official duties.

(c) Course content. Although the emphasis and course content of annual executive agency ethics training courses may change from year to year, each training course shall include, as a minimum:

(1) A review of the employees' responsibilities under Part I of Executive Order 12674 and Employee Responsibilities and Conduct, subparts A, B, and C of part 735 of this title, or (when those subparts are superseded) part 2635 of this subchapter, together with any agency supplementary regulation or addendum thereto (examples that relate specifically to agency programs and operations and any ethics-related, agency-specific statute or regulatory restrictions of the particular agency shall be provided); and

(2) A review of the employees' responsibilities under the conflict of interest statutes contained in chapter 11 of title 18 of the United States Code.

(d) Course presentation. Course materials shall be presented in accordance with the following requirements:

(1) Except as provided in paragraph (d)(2) of this section, annual ethics training shall be presented verbally, either in person or by recorded means. A qualified individual who has sufficient familiarity with the agency ethics program to answer routine questions concerning course content shall be available during and immediately following the presentation; or

(2) Based on a written determination by the designated agency ethics official or his or her designee that circumstances make it impractical to provide training to a particular employee or group of employees in accordance with paragraph (d)(1) of this section, annual ethics training may be presented by means of visual or audio recording, without the presence of a qualified individual, or by means of written materials, provided that a minimum of one and a half hours of official duty time are set aside for employees to attend the presentation or review written materials.