

## 2638.404 Report of noncompliance.

If the agency fails to comply with an order issued under 2638.402(d), the Director shall:

- (a) Notify the head of the agency of intent to furnish a report of noncompliance to the President and the Congress;
- (b) Provide the agency 14 calendar days within which to furnish written comments for submission with the report of noncompliance; and
- (c) Report the agency's noncompliance to the President and to the Congress.

## Subpart E -- Corrective and Remedial Action in Cases Involving Individual Executive Agency Employees

Source: 55 FR 1667, Jan. 18, 1990, unless otherwise noted.

## 2638.501 In general.

(a) Authority. The Director of the Office of Government Ethics has authority under subsections 402(b)(9) and 402(f)(2) of the Act to order corrective and remedial action with respect to individual employees to bring about compliance with applicable ethics provisions. Nothing in this subpart relieves an agency of its primary responsibility to ensure compliance.

(b) Definitions. For the purpose of this subpart:

(1) Ethics provision includes any rule, regulation or executive order relating to conflicts of interest or standards of conduct in the executive branch. The term excludes any statute that is contained in title 18 of the United States Code or which imposes a criminal penalty as well as any statute made applicable to a specific agency that mandates or proscribes conduct not otherwise the subject of Governmentwide standards. It excludes any matter covered by sections 101 (k) and (m) of Executive Order 12674 that are within the cognizance of agency Inspectors General, the Office of Special Counsel or the Equal Employment Opportunity Commission.

(2) Employee means any officer or employee, including a special Government employee, covered by any of the provisions contained in part 735 of this title.

(3) Head of an agency, in the case of an agency that is headed by a board, committee or other group of individuals, refers to the employee's appointing authority.

(4) Corrective action means any action necessary to remedy a violation of an ethics provision including, but not limited to, recusal, divestiture, termination of an activity, restitution, or the creation of a qualified blind or diversified trust.

(5) Disciplinary action includes the full range of disciplinary actions provided for by Office of Personnel Management regulations and instructions implementing authorities contained in title 5 of the United States Code or provided for in comparable authorities applicable to employees not subject to title 5.

(6) The terms "he," "his" and "him" include "she," "hers" and "her."

(c) Violations of criminal statutes. Nothing contained in this part gives the Director or any agency official authority to make a finding that any criminal statute relating to conflicts of interest is being or has been violated. If facts elicited under these procedures indicate that a criminal violation of any such provision is occurring or has occurred, the suspected violation will be referred for possible prosecution in accordance with 28 U.S.C. 535 and the reporting requirements set forth in 2638.603 of this chapter shall apply. Subsequent to referral, proceedings under this subpart may be initiated or continued at the discretion of the Director, after consultation with the appropriate investigatory or prosecutorial authorities.

(d) National security. Proceedings under this subpart shall be conducted in accordance with applicable national security requirements.

[55 FR 1667, Jan. 18, 1990; as amended at 55 FR 21846, May 30, 1990]

2638.502 Recommendations and advice.

The Director may make recommendations and provide advice to agencies, designated agency ethics officials and employees for the purpose of ensuring an employee's compliance with applicable ethics provisions. This authority may be used where there is doubt or a dispute regarding the applicability of an ethics provision or where the Director has information indicating that an ethics provision is being improperly interpreted. Recommendations may be made or advice provided on the Director's own initiative or at the Director's discretion in response to a written or oral request. As determined by the Director, the recommendation may be made or the advice given either orally or in writing. In addition, the Director shall afford an employee the opportunity for personal consultation, if practicable, regarding action required to be taken by the employee to achieve compliance with applicable ethics provisions.

## 2638.503 Agency investigations.

(a) Recommendation of investigation. If the Director has reason to believe that an employee is violating or has violated any ethics provision, the Director may recommend to the head of the agency that the agency conduct such investigation as is necessary to determine whether, in fact, a violation is occurring or has occurred and, where warranted, take appropriate disciplinary or corrective action. If the matter already has been investigated or if the facts are fully known to the agency and, in the opinion of the agency head, require no further investigation, the head of the agency shall notify the Director of that determination and shall promptly file the agency report required by paragraph (c) of this section.

(1) If the employee involved is the head of an agency, the recommendation shall be made to the President and the procedures set forth in this section shall serve as guidance only.

(2) Where there is reason to believe that an employee has given preferential treatment or failed to act impartially, this authority will not be used to initiate an investigation in the nature of a review or audit of the agency program in which the employee participated.

(b) Initiation of investigation. The head of the agency shall notify the Director when the agency has initiated an investigation. Where it is anticipated that the investigation will not be completed within 60 calendar days, the head of the agency will notify the Director of that fact and provide an explanation reasonably justifying additional time.

(c) Agency report. The head of the agency shall file a report with the Director detailing findings of fact and disciplinary and/or corrective actions taken, if any.

(d) Director's determination. The Director will make a determination based on the agency investigation and report.

(1) If the Director determines that the agency has conducted an adequate investigation and has taken appropriate corrective and/or disciplinary action, the Director shall notify the agency that the matter is closed.

(2) If the Director determines that the agency has conducted an adequate investigation and has recommended appropriate corrective and/or disciplinary action, the Director shall notify the agency that the matter will be closed upon notification that such action has been taken.

(3) If the Director determines that the agency has not conducted an adequate investigation, the Director may recommend that the agency undertake further investigative effort.

(4) If the Director determines that the agency has improperly interpreted an ethics provision or improperly applied an ethics provision to the facts of the case, the Director may, in accordance with 2638.502, provide advice and recommendations necessary to ensure compliance.

(5) If the Director determines that the agency has taken or recommended inappropriate corrective or disciplinary action, the Director may notify the head of the agency of intent to institute proceedings under 2638.504 or 2638.505.

(e) Notice of noncompliance. If the Director determines that the head of an agency has failed to conduct an adequate investigation within a reasonable period of time, the Director shall notify the President of that determination. A Notice of Noncompliance will not be based upon a determination that the agency has improperly interpreted or applied an ethics provision or that the agency has taken or recommended inappropriate corrective or disciplinary action.

2638.504 Director's finding.

(a) In general. If the Director has reason to believe that an employee is violating or has violated an ethics provision, the Director may initiate proceedings under this section for the purpose of making a finding as to whether there is or has been such a violation. In the context of such proceedings, the Office of Government Ethics has the burden of proof to establish that the employee is violating or has violated an ethics provision. The procedures contained in this section do not apply to findings or orders for action made to obtain compliance with the financial disclosure requirements in title II of the Ethics Act. For those findings and orders, the procedures contained in section 206 of the Act shall apply.

(b) Investigation. The Director may initiate such investigation as is necessary to determine whether proceedings under this section are warranted. Ordinarily, a determination to proceed will be based upon an agency report of investigation filed under 2638.503(c) and a determination by the Director under 2638.503(d)(5) that the agency has taken or recommended inappropriate corrective or disciplinary action.

(c) Notice. The employee shall be served personally or by United States mail with written notice of commencement of proceedings under this section. A copy of the notice shall be provided to the head of the agency and to the designated agency ethics official. The notice shall be signed by the

Director and shall include the following:

- (1) A brief statement setting forth the basis for a possible ethics violation;
- (2) A copy of this section; and
- (3) The date by which the employee's comments must be submitted.
- (d) Employee comments. The respondent employee has the right to comment on the alleged violation of an ethics provision by submission of evidence or arguments. As determined by the Director, the submission may be made orally or in writing. In the absence of an extension granted by the Director for good cause shown, comments shall be submitted within the time set forth in the notice
- (e) Finding. The Director will make a written finding as to whether a violation of any ethics provision has occurred or is occurring. The finding will include a statement of the facts upon which the finding is based and a reference to the specific ethics provision in issue. A copy of the finding will be provided to the respondent employee, the head of the agency and the designated agency ethics official.

2638.505 Director's decision and order.

(a) In general. Where the Director has reason to believe that an employee is violating an ethics provision, the Director may, subject to the procedures set forth in this section, issue an order that the employee take specific corrective action to remedy the violation. Ordinarily, a determination to proceed under this paragraph (a) will be based on the Director's finding under 2638.504(e) that an ethics violation has occurred or is occurring and reason to believe that the violation is continuing. The procedures contained in this section do not apply to findings or orders for action made to obtain compliance with the financial disclosure requirements in title II of the Ethics Act. For those findings and orders, the procedures contained in section 206 of the Act shall apply.

(b) Notice. The employee will be served, personally or by United States mail, with notice of proceedings to determine whether a violation of an ethics provision is occurring and whether corrective action is necessary to end the violation. A copy of the notice shall be provided to the head of the employee's agency and the designated agency ethics official thereof. The notice shall specify the employee's right to present evidence or arguments either in writing or, at the employee's written request, at a hearing conducted on the record. The notice shall be signed by the Director and shall include:

(1) A brief statement setting forth the basis for a possible ethics violation;

(2) Where applicable, a copy of the Director's finding under 2638.504(e);

(3) A statement of the authority under which proceedings are to be conducted, together with a copy of this section; and

(4) The date by which the employee must, by written notification to the Director, elect to present evidence and arguments either at a hearing or in writing.

(c) Separation of functions. Once the Director has issued a notice of proceedings and if the respondent employee has elected to have a hearing conducted on the record, the General Counsel of the Office of Government Ethics shall designate attorneys of the Office of Government Ethics to participate on behalf of the Office in the proceedings, including the investigation and presentation of the evidence at the hearing. During this time period, the General Counsel of the Office of Government Ethics shall serve as Advisor to the Director and will not supervise Office of Government Ethics attorneys who are charged with the investigation and presentation of the evidence in the pending matter. A Deputy General Counsel shall supervise the Office attorneys responsible for the investigation and presentation of the evidence during this time period. No officer, employee, or agent engaged in the performance of investigative or advocacy functions for the Office of Government Ethics shall, in that or a factually related case, participate or advise in the decision, recommended decision or Office review except as witness or counsel in the proceedings. The Deputy General Counsel may request the views or report of the designated agency ethics official of the employee's agency when necessary to develop the record.

(d) Written submissions. Where the respondent employee elects to submit evidence and arguments in writing, he will be given a period of 30 calendar days from the date of the notice within which to make a submission.

(e) Hearings. If the respondent employee demands a hearing conducted on the record, he will be given written notice of the time and place of the hearing. The hearing will be convened within a reasonable period of time and will be conducted on the record. An administrative law judge who has been appointed under 5 U.S.C. 3105 shall act as the presiding official at the hearing. Hearings will be as informal as may be reasonably appropriate under all the circumstances. Evidence and testimony, although not ordinarily admissible under rules of evidence, may be received subject to the discretion of the administrative law judge. Immaterial, irrelevant or

unduly repetitious evidence may be excluded. The parties may stipulate as to any facts or testimony. The testimony of witnesses shall be under oath and witnesses shall be subject to cross-examination. The administrative law judge shall make such rulings with respect to the conduct of the hearings as circumstances may require to ensure the orderly and expeditious presentation of evidence in a manner fair to the parties and consistent with these regulations and requirements of due process of law. The following procedures will apply to the hearing:

(1) Conference. The respondent employee or the designated attorney for the Office of Government Ethics may request, and the administrative law judge, on his own initiative or in response to a request, may set a prehearing conference for such purposes as the administrative law judge deems necessary.

(2) Public hearings. Hearings shall generally be open to the public. However, the administrative law judge may order a hearing or any part thereof closed, on his own initiative or upon motion of a party or other affected person, where to do so would be in the best interests of national security, the respondent employee, a witness, the public or other affected persons. Unless specifically excluded by the administrative law judge, the designated agency ethics official of the employee's agency shall be permitted to attend a closed hearing. Any order closing the hearing or any part thereof shall set forth the reasons for the administrative law judge's decision. Any objections thereto shall be made a part of the record. If a party or affected person's request to close the hearing or any part thereof is denied by the administrative law judge, that request shall be immediately appealable to the Director and the hearing shall be held in abeyance pending resolution of the appeal. The notice of appeal shall be filed in writing, not to exceed 10 pages exclusive of attachments, with the Director within 3 working days of the administrative law judge's denial of the request. The Director shall provide an opportunity for an oral hearing on the appeal conducted on the record and shall decide the appeal within 3 working days following receipt of the notice of appeal.

(3) Continuances and delays. The authority to adjourn the hearing shall rest with the administrative law judge. Continuances will be allowed only for the most compelling reasons.

(4) Hearing record. Testimony and arguments shall be recorded verbatim and preserved for a reasonable period of time. When requested, transcripts of the testimony and arguments and copies of all documentary exhibits will be made available to the respondent employee upon the payment of the reasonable costs thereof.

(5) Representation. A party is entitled to appear in person or by or

with counsel.

(6) Witnesses. The administrative law judge does not have the authority to subpoena witnesses. However, the respondent employee and the Office of Government Ethics may call witnesses whose testimony is relevant and necessary to the proceedings. Witnesses who are to testify or to produce documents in their official capacities will be assigned to do so by their agencies pursuant to 5 U.S.C. 6322 and will be paid travel expenses under 5 U.S.C. 5702. Witnesses who are not Federal employees may be issued invitational travel orders under 5 U.S.C. 5703 based on a determination by the administrative law judge that their testimony is essential to the proceedings.

(7) Proof. The Office of Government Ethics has the burden of proof to establish that the respondent employee is committing a violation of an ethics provision and that corrective action is necessary to end the violation.

(8) Evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination. The respondent employee and the designated attorney for the Office of Government Ethics may offer evidence, arguments, testimony of witnesses, affidavits or sworn statements.

(f) Recommended decision. At the conclusion of the hearing, the administrative law judge may request that the parties submit proposed findings and conclusions within a reasonable period of time. After receipt of the proposed findings and conclusions, if any, the administrative law judge shall certify the entire record to the Director for decision. When so certifying the record, the administrative law judge shall make a recommended decision that includes his written findings of fact and conclusions of law with respect to material issues.

(g) Decision and order. The Director's decision shall include written findings and conclusions with respect to all material issues and shall be supported by substantial evidence of record. The order shall state the corrective action, if any, to be taken by the respondent employee in order to remedy a violation of an ethics provision and shall establish a reasonable period of time within which the respondent employee must commence and complete the corrective action. A copy of the decision and order shall be furnished to the respondent employee and to the head of the agency and the designated agency ethics official, or where the respondent employee is the head of an agency, to the President.

(1) Preliminary to issuing a decision and order, the Director may request that comments on the recommended decision be provided by the designated agency ethics official of the employee's agency.



(2) Where the respondent employee has elected to have a hearing conducted on the record, the Director shall issue a decision and order as soon as practicable following receipt of the certified record and the administrative law judge's recommended decision.

(3) Where the respondent employee has elected to make a written submission under paragraph (d) of this section or has chosen to make no submission and has not requested a hearing, the Director will issue a decision and order as soon as practicable following receipt of all materials of record.

(4) In addition to the decision and order and any finding issued under 2638.504(e), the record will include, where applicable, all written submission under 2638.504(d) and 2638.505(d), a record of the hearing, all documentary evidence introduced at the hearing, any proposed findings and conclusions submitted by the parties and the administrative law judge's recommended decision.

(h) Compliance with the order. The respondent employee shall comply with the Director's order by commencing and completing the corrective action within the time specified in the order and by furnishing the Director with satisfactory evidence of compliance.

(i) Notice of noncompliance. Where the respondent employee fails to comply with the Director's order within the time specified in the order, the Director will provide the head of the respondent employee's agency with written notice of the respondent employee's failure to comply. Where the respondent employee is the head of the agency, the Director shall submit such notification to the President.

[55 FR 1667, Jan. 18, 1990, as amended at 55 FR 21846, May 30, 1990]

2638.506 Director's recommendation.

(a) Where the Director has made a finding under 2638.504(e) or has issued a decision and order under 2638.505(g) that an ethics provision is being or has been violated, the Director may recommend to the head of the respondent employee's agency that appropriate disciplinary action be taken. If the respondent employee is the head of an agency, the Director shall make any such recommendation to the President and the procedures contained in this section will serve as guidance only.

(b) Agency response. Within the time specified by the Director in his recommendation, the head of the agency shall notify the Director in writing of the action taken. If the action cannot be accomplished within the time

specified, the head of the agency shall notify the Director in writing of the time needed for the action to be taken, and, thereafter, will provide appropriate notice of the disciplinary action taken.

(c) Notice of noncompliance. If the Director determines that the head of an agency has not taken appropriate disciplinary action within a reasonable period of time after the Director has recommended such action, the Director may notify the President of that determination in writing.

#### Subpart F -- Executive Branch Agency Reports

Source: 55 FR 1670, Jan. 18, 1990, unless otherwise noted.

##### 2638.601 In general.

Agencies are required by section 402(b)(10) of the Act to file such reports as the Director of the Office of Government Ethics deems necessary. Section 402(e) contains specific requirements for annual reports and for reporting cases referred for possible prosecution under 28 U.S.C. 535. Reporting requirements imposed under this subpart are in addition to any requirements for reports or opinions contained in part 735 of this title, parts 2633 through 2637 of this chapter, or otherwise under this chapter, and in other subparts of this part.

##### 2638.602 Annual agency reports.

(a) On or before February 1 of each year, each agency shall file with the Office of Government Ethics a report containing information about the agency's ethics program. Detailed reporting requirements will be specified in instructions to be issued by the Director in advance of the first day of the period to be covered by the annual report. Annual agency reports will cover the prior calendar year and, as a minimum, will include the following:

(1) The name, position, title and duties of each official who performs any or all of the duties of the designated agency ethics official or alternate;

(2) Statistics regarding public and nonpublic (confidential) financial disclosure report filings;

(3) A description and evaluation of the agency's program of ethics education, training and counseling, including the number of training courses given, the subject matters covered, training materials distributed and counseling services offered.

(b) Failure to timely file the report required by paragraph (a) of this section may be cause to invoke the procedures at subpart D of this part for correction of agency programs.

## 2638.603 Reports of referral for possible prosecution.

(a) In general. Section 535 of title 28 of the United States Code imposes upon every agency a duty to report to the Attorney General any information, allegations or complaints relating to violations of title 18 of the United States Code involving Government officers and employees, including possible violations of 18 U.S.C. 207 by former officers and employees. Guidelines issued by the Attorney General require reporting of such allegations or complaints to the local office of the appropriate investigative agency, the United States Attorney for the district in which the violation occurred or is occurring and the appropriate division of the Department of Justice.

(b) Report of referral. When any matter involving an alleged violation of Federal conflict of interest law is referred pursuant to 28 U.S.C. 535, the agency shall concurrently notify the Director of the Office of Government Ethics of the referral and provide a copy of the referral document, unless such notification or disclosure would otherwise be prohibited by law.

(c) Disposition reports. (1) Where there has been notice that the matter reported under paragraph (b) of this section will not be prosecuted, the agency shall promptly notify the Director of that fact, the date of the decision and any disciplinary or corrective action initiated, taken or to be taken by the agency.

(2) When the agency is notified or learns from the Department of Justice that an indictment has been handed up and signed or an information has been filed, the agency shall promptly report that fact to the Director. Thereafter, the agency shall promptly notify the Director of the final disposition of the prosecution and of any disciplinary or corrective action initiated, taken or to be taken by the agency.

(3) When disciplinary or corrective action is initiated or is to be taken, the agency will notify the Director of the final disposition of the matter.

[55 FR 1670, Jan. 18, 1990, as amended at 55 FR 21847, May 30, 1990]

## Subpart G -- Executive Agency Ethics Training Programs

Source: 57 FR 11890, Apr. 7, 1992, unless otherwise noted.

## 2638.701 Executive agency ethics training programs; generally.

Each executive branch agency shall maintain a program of ethics

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 initial ethics orientation required by 2638.703 of this subpart and annual ethics training required by 2638.704 of this subpart. For purposes of this subpart, the term "employee" shall include special Government employees (as defined in 18 U.S.C. 202(a)) and officers of the uniformed services.

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 E.O. 12674 (as modified by E.O. 12731) and 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. For the purposes of this subpart, the following shall be considered qualified individuals:

(i) The designated agency ethics official described in 2638.201;

(ii) The alternate agency ethics official described in 2638.202(b);

(iii) A deputy ethics official described in 2638.204;

(iv) Any employee of the Office of Government Ethics whose services are made available by the Office of Government Ethics; and

(v) An individual determined by the designated agency ethics official or his or her designee to possess sufficient familiarity with the conflict of interest statutes and standards of ethical conduct regulations applicable to agency employees to respond to routine questions raised during training; and

(3) Furnish to the Office of Government Ethics by August 31 of each year a written plan for annual ethics training by the agency for the following calendar year. The first written plan for annual ethics training for calendar year 1993 shall be submitted by August 31, 1992. Each training plan 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 under the exception provided at 2638.704(d)(2)(i) of this subpart, together with a written description of the basis for allowing an exception;

(iii) Estimates of the number of special Government employees and the number of officers in the uniformed services to whom the annual ethics training course will be presented without the presence of a qualified individual under the exceptions provided at 2638.704 (d)(2) (ii) and (iii) of this subpart;

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

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

(vi) 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 the Office of Government Ethics and any deficiencies shall be communicated in writing to the designated agency ethics official concerned by November 15 of each year, or 75 days after receipt of the agency plan, whichever occurs later.

2638.703 Initial agency ethics orientation.

(a) Each agency employee shall, on or before February 3, 1993, be provided:

(1) A copy of part I of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees, dated April 12, 1989, as amended by Executive Order 12731, 3 CFR, 1990 Comp., p. 306;

(2) A copy of part 2635 of this chapter, Standards of Ethical Conduct for Employees of the Executive Branch, and any supplemental regulation of the concerned agency;

(3) The names, titles, office addresses, and telephone 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 hour of official duty time for the purpose of

permitting the employee to review the written materials furnished pursuant to this section. If the agency provides an ethics training course during official duty time, including annual ethics training provided under 2638.704, or a nominee or other new entrant receives ethics training provided by the Office of Government Ethics or the White House Office, the period of official duty time set aside for individual review may be reduced by the time spent in training.

(b) Each new agency employee who enters on duty after May 7, 1992, shall, within 90 days of the date of his or her entrance on duty, or on or before February 3, 1993, whichever is later, be provided with the materials and time specified in paragraph (a) of this section.

(c) When copies of the material described in paragraph (a)(1) of this section are retained and readily accessible in the employee's immediate office for use by several employees, the requirement of paragraph (a)(1) of this section may be met by furnishing each employee a copy for the purpose of review.

[57 FR 11890, Apr. 7, 1992, as amended at 57 FR 58400, Dec. 10, 1992; 57 FR 61612, Dec. 28, 1992]

#### 2638.704 Annual agency ethics training.

(a) Annual ethics training. Beginning in calendar year 1993, and in every year thereafter, each employee identified in paragraph (b) of this section shall be provided a minimum of one hour of official duty time for 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 chapter;

(4) Employees required to file confidential (nonpublic) financial disclosure reports under subpart I of part 2634 of this chapter and any supplemental regulation or addendum of the concerned agency;

(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 agency 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 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, as amended, and the Standards of Ethical Conduct for Employees of the Executive Branch, part 2635 of this chapter, together with any agency's supplemental regulation. This review shall include examples that relate specifically to agency programs and operations and any ethics-related, agency-specific statute or regulatory restrictions of the particular agency; and

(1) A review of the employees' responsibilities under part I of Executive Order 12674 and any supplemental agency regulations thereto. This review shall include examples that relate specifically to agency programs and operations and any ethics-related, agency-specific statute or regulatory restrictions of the particular agency; and

(2) A review of the employees' responsibilities under the conflict of interest statutes contained in 18 U.S.C. chapter 11.

(d) Course presentation. The training course 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, as defined in 2638.702(a)(2) of this subpart, shall be available during and immediately following the presentation.

(2) An agency may provide annual ethics training by means other than those specified in paragraph (d)(1) of this section under the following circumstances:

(i) Where the designated agency ethics official, or his or her designee, has made a written determination 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. In such cases,

annual ethics training may be presented by recorded means, without the presence of a qualified individual, or by means of written materials, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review written materials;

(ii) In the case of special Government employees covered by paragraph (b) of this section, an agency may meet the annual training requirement without the presence of a qualified individual by presenting the information verbally, as through a recording, by distribution of written materials, or by other means at the agency's discretion; and

(iii) In the case of officers in the uniformed services who serve on active duty for 30 or fewer consecutive days and who are covered by paragraph (b) of this section, an agency may meet the annual training requirement without the presence of a qualified individual by presenting the information verbally as through a recording, by distribution of written materials, or by other means at the agency's discretion.

[57 FR 11890, Apr. 1992, as amended at 57 FR 58400, Dec. 10, 1992]