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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations; correction.

SUMMARY: The Administrative Conference is correcting an error in Recommendation 89-10, Improved Use of Medical Personnel in Social Security Disability Determinations, 1 CFR 305.89-10, which appeared in the Federal Register on December 29, 1989 (54 FR 53493, 53496).

FOR FURTHER INFORMATION CONTACT: Jean Conrad at (202) 254-7065.

Dated: January 10, 1990.

Jeffrey S. Lubbers,
Research Director.

The following correction is made in Recommendation 89-10, Improved Use of Medical Personnel in Social Security Disability Determinations, 1 CFR 305.89-10, published in the Federal Register on December 29, 1989 (54 FR 53496).

§ 305.89-10 [Corrected]

1. The Recommendation number in parentheses at the end of this title which reads "(Recommendation 88-10)" is revised to read as follows: "(Recommendation 89-10)."

[FR Doc. 90-1141 Filed 1-17-90; 8:45 am]

BILLING CODE 6110-01-M

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209-AA02 (formerly 3206-AD71)

Implementation of the Office of Government Ethics Reauthorization Act of 1988

AGENCY: Office of Government Ethics.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Government Ethics is issuing interim regulations to establish procedures: (1) To correct deficiencies in agency ethics programs; (2) to bring individual employees into compliance with rules, regulations and executive orders relating to standards of conduct and conflicts of interest; and (3) to specify requirements for agency reports and assistance.

DATES: Interim regulations effective February 20, 1990. Comments must be received on or before March 19, 1990.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue NW., DC 20005-3917, Attention: Ms. Wilcox.

FOR FURTHER INFORMATION CONTACT: Leslie Wilcox, Office of Government Ethics, telephone (202/FTS) 523-5757.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics Reauthorization Act of 1988, Public Law 100-598, 5 U.S.C. app. IV, amended title IV of the Ethics in Government Act of 1978, as amended, to authorize appropriations for the Office through fiscal year 1994, to establish the Office of Government Ethics as a separate executive agency as of October 1, 1989, and to amplify certain authority contained in that title. Included is the authority of the Director of the Office of Government Ethics under sections 402(b)(9) and 402(f) of the Ethics Act to order corrective action on the part of individuals and agencies, the authority under sections 402(b)(10) and 402(e) to require reports from executive agencies, and the authority of section 403 to direct agencies to provide personnel and services necessary to carry out the purposes of the Act. The provisions of the new Ethics Reform Act of 1989, Public Law 101-194 (November 30, 1989), are not reflected in these regulations; appropriate changes, including modified citations, will be made in the future once the various provisions of the new law

which are relevant to these regulations become effective.

These interim regulations outline procedures for correcting agency ethics programs and are designed to address deficiencies in agency procedures and operations implementing laws and regulations relating to financial disclosure, standards of conduct and conflicts of interest. While giving agencies notice of deficiencies and the opportunity to initiate corrective action, the regulations provide that the Director of the Office of Government Ethics may order corrective action and notify the President and the Congress where the agency fails within a reasonable time to comply with an order.

The procedures contained in the regulations also address instances of violations by individual officers and employees that apply where the Director has reason to believe that an employee is violating or has violated a rule, regulation or provision in an executive order relating to standards of conduct or conflicts of interest in the executive branch. The Director may offer advice and recommendations and may also recommend that the individual's employing agency investigate, consider and resolve the matter. There are additional procedures which may be used in lieu of or in conjunction with an agency investigation. The Director may issue a finding as to whether an employee has violated or is violating an ethics provision and may recommend disciplinary action or order appropriate corrective action. Proceedings contemplating a recommendation or order require notice and opportunity for the employee to comment. Prerequisite to the Director's issuance of an order for corrective action, the employee may elect to have a hearing on the record. There are requirements for reporting noncompliance by the employee to the head of the agency and for reporting noncompliance by the agency to the President. Recommendations and orders respecting an agency head may entail transmittal to the President.

In addition, the regulations contain requirements for annual reports concerning agency ethics programs, starting February 1, 1990, and for notifying the Director when matters are referred for possible prosecution.

These regulations contain certain citations to various parts in new chapter

XVI of 5 CFR for the regulations of the Office of Government Ethics. See 54 FR 50229-50231 (December 5, 1989), which established the new chapter and transferred three government ethics regulations to it—new parts 2634, 2637 and 2638 (the latter part being amended by this document). As explained in the cited *Federal Register* document, one executive branch government ethics regulation, part 735, remains for now in chapter I of 5 CFR, the chapter for the Office of Personnel Management.

Administrative Procedure Act

Pursuant to section 553(b) of title 5 of the United States Code, the Director of the Office of Government Ethics finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because these regulations concern matters of agency organization, practice and procedure and because the Office of Government Ethics Reauthorization Act of 1988 has been in effect since November 1988, and it is essential to the workings of federal agency ethics programs that these implementing regulations go into effect as soon as possible. However, these are interim rules with provision for a 60 day comment period. The Office of Government Ethics will review any comments received and consider any modifications to these rules which appear warranted.

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 Requirements.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these regulations do not contain information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Regulation Identifier Number

The Regulation Identifier Number (RIN) in the heading of this document indicates the newly-assigned Office of Government Ethics number for this rulemaking, 3209-AA02. Previously, the rulemaking carried an Office of Personnel Management (OPM) RIN, 3206-AD71, since the Office of

Government Ethics was, until October 1, 1989, a part of OPM.

List of Subjects in 5 CFR Part 2638

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

Approved: December 18, 1989.

Donald E. Campbell,
Acting Director, Office of Government Ethics.

Accordingly, 5 CFR part 2638 is amended 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:

Authority: 5 U.S.C. appendixes, III, IV.

2. Subparts D, E and F of part 2638 are added to read as follows:

Subpart D—Correction of Agency Programs

Sec.

- 2638.401 In general.
- 2638.402 Corrective orders.
- 2638.403 Agency compliance.
- 2638.404 Report of noncompliance.

Subpart E—Corrective and Remedial Action in Cases Involving Individual Employees

- 2638.501 In general.
- 2638.502 Recommendations and advice.
- 2638.503 Agency investigations.
- 2638.504 Director's finding.
- 2638.505 Director's decision and order.
- 2638.506 Director's recommendation.

Subpart F—Agency Reports

- 2638.601 In general.
- 2638.602 Annual agency reports.
- 2638.603 Reports of referral for possible prosecution.

Subpart D—Correction of Agency Program

§ 2638.401 In general.

The Director of the Office of Government Ethics has authority under subsections 402(b)(9) and 402(f)(1) of the Ethics in Government Act to order action to correct deficiencies in agency ethics programs. These procedures are intended to be used to correct deficiencies in agency ethics programs that are not being addressed adequately by the agency. They are not intended to be used to deal with cases involving individual employees or former employees. See subpart E of this part. For purposes of this section, an agency ethics program shall include those matters that are the responsibility of agency heads and designated agency ethics officials under subpart B of this part and shall include the requirements

under part 2634 of this chapter and part 735 of this title to establish public and nonpublic financial disclosure systems. In implementing these procedures, the Director may use any authority contained in the Ethics Act.

§ 2638.402 Corrective orders.

(a) *Notice.* Where the Director has information indicating that an agency ethics program is not in full compliance with the requirements set forth in applicable statutes or regulations, the Director may issue a Notice of Deficiency to the designated agency ethics official and request an agency report under paragraph (b) of this section.

(b) *Agency report.* Within such time as may be set forth in the Notice of Deficiency, the designated agency ethics official shall provide a written report to the Director that shall include relevant information about the agency's ethics program. The ethics official's report may include:

- (1) Information establishing that there is no deficiency;
- (2) An explanation of how any deficiency is being corrected; or
- (3) A plan for correcting any deficiency within a reasonable period of time.

(c) *Director's determination.* The Director will make a determination based on the agency report.

(1) If the Director determines that there is no deficiency, the designated agency ethics official will be so notified.

(2) If the Director determines that appropriate steps are being taken or that the agency has presented an adequate plan for correcting the deficiency, the Director will so notify the designated agency ethics official and, in consultation with the designated agency ethics official, establish requirements for status reports, if necessary, and for notification when the deficiency has been corrected.

(3) If the Director determines that a deficiency is not being corrected, the Director will issue an Order under paragraph (d) of this section.

(d) *Orders.* An order issued by the Director will be addressed to the head of the agency with a copy to the designated agency ethics official and shall specify:

- (1) The deficiency in the agency ethics program that requires correction;
- (2) The basis upon which the Director has determined that a deficiency exists;
- (3) The corrective action required to remedy the deficiency; and
- (4) Any reporting requirements necessary to establish that corrective action has been accomplished.

§ 2638.403 Agency compliance.

Within such time as may be set forth in the order, the agency head shall file a report with the Director detailing the corrective action taken. If corrective action cannot be accomplished within that time, the agency head shall submit a plan of corrective action for approval by the Director providing for appropriate status reports and notification of compliance. In either case, if the agency report or plan is deemed satisfactory, the Director will so inform the agency head. If the agency report or plan is insufficient, but only in minor respects, the Director may inform the agency head of the adjustments needed to bring the report or plan into compliance and a timeframe therefor; otherwise, the procedures under § 2638.404 of this subpart will be invoked.

§ 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 Employees**§ 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 12874 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.

§ 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. 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.

(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 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 the respondent employee, a witness, the public or other affected persons. 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) 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.

(2) 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.

(3) 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.

§ 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—Agency Reports

§ 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 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 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.

[FR Doc. 90-1175 Filed 1-17-90; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt. 309]

Food Stamp Program; Quality Control Technical Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On January 27, 1989 (54 FR 4037) the Department of Agriculture published proposed regulations to amend provisions concerning the Food Stamp Program's arbitration of quality control reviews. Those regulations proposed a 150 day time limit from the date of publication of the final rule on a state's request for arbitration of quality control reviews received by a State agency before February 22, 1988. Currently, only quality control reviews received by a State agency after February 22, 1988 are subject to a time limit on the state's request for arbitration. This action finalizes the time limit on reviews received by the state prior to February 22, 1988.

DATE: This final rule is effective February 20, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connell, Supervisor, Quality Control Policy Section, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756-3471.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291. This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this rule as non-major. The rule will not have an annual effect on the economy of \$100 million or more. The rule will have no effect on costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. Further, the rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Act. This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980. 5 U.S.C. 601-612. G. Scott Dunn, Acting Administrator of