



DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 0

RIN 2900-AS04

Agency Ethics Officials

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation governing Agency ethics officials to reflect that the Secretary designates these officials, to identify the employees who may serve in these roles, and to make other relevant nomenclature changes regarding employees and groups within the Office of General Counsel.

DATES: *Effective date:* This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tracianna L. Winston, Chief Counsel, Ethics Specialty Team, Office of the General Counsel (021), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-6269. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Title 38 of the Code of Federal Regulations, Chapter I, Part 0 governs the Values, Standards of Ethical Conduct, and Related Responsibilities of VA employees. Subpart B, “General Provisions” includes 38 CFR 0.735-1 “Agency ethics officials” which is amended to provide updated information regarding the designation of agency ethics officials and the employees who may serve in these roles. The sections are also amended to reflect nomenclature changes to the names of certain Office of General Counsel offices and the employees in those offices.

Specifically, 38 CFR 0.735-1(a) is amended to reflect that the Secretary designates attorneys from the Office of General Counsel to serve as the Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official (ADAEO). Additionally, 38 CFR 0.735-1(b)(1) is amended to reflect nomenclature changes to the names of Office of General Counsel positions, including District Chief Counsels, and teams, including the Ethics Specialty Team. This subsection is also amended to broaden the group of individuals who may act as Deputy Ethics Officials pursuant to delegations from the DAEO. Finally, 38 CFR 0.735-1(b)(2) is amended to include a citation to 5 CFR 2638.104(e) as the existing citation to 5 CFR 2638.204 is outdated.

Administrative Procedure Act

This final rule is a procedural rule that does not impose new rights, duties, or obligations on affected individuals but, rather, explains that the Secretary appoints Agency ethics officials and identifies the employees that may serve as Agency ethics officials. Therefore, it is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553. See 5 U.S.C. 553(b)(A) and (d)(3). This rule merely updates information regarding the delegation of Agency ethics officials, the employees who may serve in those roles, and the names of certain offices and employees in the Office of General Counsel.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601-612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the

Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This rule will affect only: (1) Office of General Counsel (OGC) and VA employees who serve as Agency ethics officials, and (2) VA employees seeking ethics advice from these Agency ethics officials. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Assistance Listing

There are no Assistance Listing numbers and titles for the programs affected by this document.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

List of Subjects in 38 CFR Part 0

Core Values, Characteristics and Customer Experience Principles of the Department, General Provisions, Standards of Ethical Conduct, and Related Responsibilities of Employees.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 26, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,
Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of General Counsel,
Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 0 as follows:

PART 0 – VALUES, STANDARDS OF ETHICAL CONDUCT, AND RELATED RESPONSIBILITIES

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

Authority: 5 U.S.C. 301; 38 U.S.C. 501; see sections 201, 301, and 502(a) of E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Amend § 0.735-1 by revising paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 0.735-1 Agency ethics officials.

(a) *Designated Agency Ethics Official (DAEO)*. The Secretary will designate attorneys from the Office of General Counsel to serve as the Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official (ADAEO).

(b) * * *

(1) The District Chief Counsels and attorneys on the Ethics Specialty Team are Deputy Ethics Officials. They have been delegated the authority to act for the DAEO pursuant to 5 CFR 2638.104(e).

(2) Other officials may also act as Deputy Ethics officials pursuant to delegations of one or more of the DAEO's duties from the DAEO.