

December 1, 2003

The Honorable Karen D. Cyr
General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Mail Stop OWF 15B18
Rockville, MD 20852-2738

Dear Ms. Cyr:

As part of our agency monitoring activities, the Office of Government Ethics (OGE) has reviewed the U.S. Nuclear Regulatory Commission's (NRC) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the effectiveness of the ethics program, largely measured by its compliance with applicable statutes and regulations. This review was conducted during September 2003.

LIMITED SCOPE OF REVIEW

Based on our pre-review results, including the fact that NRC's ethics program has historically been administered effectively, we decided to limit the scope of the review to cover only the ethics program as it applies to special Government employees (SGE) and the overall enforcement of the standards of ethical conduct.

HIGHLIGHTS OF THE REVIEW

Our review found that NRC's ethics program continues to be administered effectively, which we attribute to the accumulated knowledge of its ethics counselors. SGEs receive timely ethics advice concerning potential conflicts of interest, which is a fundamental purpose of the ethics program. Furthermore, NRC ensures that disciplinary actions are taken for ethical misconduct.

ETHICS PROGRAM FOR SGEs

NRC maintains an ethics program for SGEs which has all the basic elements that are tailored for their needs.

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NRC Examination Of Financial Disclosure
Reports For Potential Conflicts

NRC's Deputy Ethics Counselor examines SGEs' financial disclosure reports for potential conflicts of interest as part of the approval process for appointments and reappointments of NRC's advisory committee members, consultants, and experts. Members who are appointed to positions on three of NRC's five Federal Advisory Committees Act (FACA) committees¹ are SGEs. Consultants and experts are also SGEs and are appointed to positions on the FACA committees, on NRC's Atomic Safety and Licensing Board Panel (ASLBP), and within offices at NRC headquarters and its regions.

NRC Examination Of Certain
Financial Disclosure Reports
For Prohibited Securities

NRC's supplemental standards of ethical conduct regulation at 5 C.F.R. part 5801 prohibits ownership of securities identified on its prohibited securities list for SGEs who are identified in NRC's Management Handbook 7.7 (handbook). Members of ACNW and ACRS, members (part-time Administrative Law Judges (ALJ)) of ASLBP, and attorneys who are appointed as experts to ASLBP are prohibited from owning securities on the prohibited securities list. Members of ACMUI and consultants can own securities identified on the prohibited securities list. Nonetheless, 18 U.S.C. § 208(a) prohibits any SGE from participating in particular matters in which he has a personal financial interest.

OGE Examination Of Financial Disclosure Reports

We examined all 89 financial disclosure reports (26 public and 63 confidential reports) required to be filed by SGEs on board at the time of our review and found that they were filed, reviewed, and certified timely. New entrant reports are required to be filed within 30 days of SGEs' appointments. Follow-on new entrant public reports are due by May 15. Follow-on new entrant confidential reports for ALJs are due by July 1. Follow-on new entrant confidential reports for other than ALJs are due by October 1.

We also examined the 14 remedial actions that were taken by SGEs (all public filers) to bring their financial disclosure reports into compliance with applicable laws and regulations specified in 5 C.F.R. § 2634.605(b)(1)(ii). The actions consisted of 2 divestitures, 8 notices to disqualify,

¹NRC's five FACA committees are the Advisory Committee on Medical Uses of Isotopes (ACMUI), the Advisory Committee on Nuclear Waste (ACNW), the Advisory Committee on Reactor Safeguards (ACRS), the Licensing Support System Advisory Review Panel (LSSARP), and the Peer Review Committee for Source Term Modeling (PRCSTM). The members of the LSSARP and the PRCSTM are representatives.

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3 waivers (18 U.S.C. § 208(b)(3)), and 1 waiver of prohibited securities made in accordance with 5 C.F.R. § 5801.102(e)(1)(iii). We found that the remedial actions taken appeared timely and appropriate. However, the Deputy Ethics Counselor informed us that OGE was not routinely consulted on the 18 U.S.C. § 208(b)(3) waivers and that the waivers were not forwarded to OGE, as required by 5 C.F.R. § 2640.303. To remedy this, the Deputy Ethics Counselor informed us that he will consult OGE when practicable and will forward all future waivers referred to in §§ 2640.301 and 2640.302 to OGE.

Ethics Advice

Although most SGEs are not required to divest their financial holdings if the holding is listed on the prohibited securities list, all SGEs are advised verbally that, in accordance with 5 C.F.R. § 5801.102(e)(2), they must not participate in particular matters in which the SGE has a personal financial interest unless an 18 U.S.C. § 208(b) waiver is granted. Additionally, the Deputy Ethics Counselor provides verbal advice to advisory committee attendees prior to each committee meeting.

Ethics Training

SGEs receive ethics training materials applicable to SGEs and a conflict of interest briefing upon appointment and reappointment. Additionally, ACNW and ACRS members, most of whom are public filers, receive verbal ethics training annually.

NRC ENFORCEMENT OF THE STANDARDS OF ETHICAL CONDUCT

NRC enforces the Standards of Ethical Conduct for Employees of the Executive Branch regulation. In 2002, there were 14 violations of the misuse of Government property provision at 5 C.F.R. § 2635.704, which resulted in administrative actions ranging from a letter of reprimand to a 45-day suspension. It appears that NRC, in accordance with § 2638.203(b)(9), is ensuring that the administrative actions taken are prompt and effective. NRC had taken no other actions resulting from ethical violations.

Employees violated the misuse of Government property provision irrespective of receiving information regarding the use of Government property. Prior to the 2002 violations, all NRC employees should have received information regarding use of Government property either in the initial ethics training materials that should have been provided to new employees or in the "Yellow Announcements" that were addressed to all NRC employees. Additionally, all employees can access information regarding the misuse of Government property provision on the NRC Web site. The Deputy Ethics Counselor informed us that he coordinates topics of interest for the "Yellow Announcements" and other ethics training materials with the Office of Inspector General and the Office of Human Resources.

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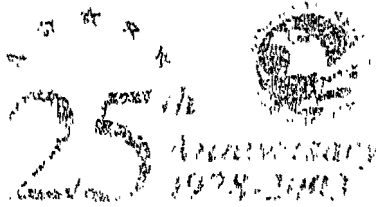
In closing, I wish to thank you and your staff on behalf of the ethics program. No six-month follow-up review is necessary in view of the fact that we have no recommendations for improving your program at this time. We are sending a copy of this report to the Inspector General. Please contact Jean Hoff at 202-482-9246, if we can be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 03 - 024



December 1, 2003

The Honorable Hubert T. Bell, Jr.
Inspector General
Nuclear Regulatory Commission
11555 Rockville Pike
Mail Stop T5D28
Rockville, MD 20852-2738

Dear Mr. Bell:

As part of our agency monitoring activities, the Office of Government Ethics has completed a review of the ethics program at the Nuclear Regulatory Commission. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended.

I have enclosed a copy of our report for your information. If you wish to discuss the report, please contact me at 202-482-9220.

Sincerely,

Jack Covalesski
Deputy Director
Office of Agency Programs

Enclosure