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Subject: Draft Discrimination Task Group Report

Below is the result of your feedback form. It was submitted by James E. Foster (JEF@NRC.GOV) on Friday, May 25, 2001 at 12:00:37

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Comments: The Draft Discrimination Task Group Report is an excellent effort to compile agency, industry, and individual concerns with the NRC process for handling discrimination complaints. The reports' recommendations are a small but significant step in the direction of correcting the process, and should be implemented.

The report is surprisingly silent on the previous GAO reviews of the same process, and details as to referrals to the Department of Justice and related statistics are not present. The number of declinations from DOJ would be of interest.

More analysis of the role of the NRC Office of Investigations (OI) in the process is needed, including their related discrimination investigative training, guidance on discrimination determinations, caseload, etc. The report indicates that some 44% of the current OI caseload is discrimination complaints (Background, Section III), but there is no other federal agency where a violation of employee protection regulations could result in criminal sanctions (II.H). The need to have Criminal Investigators (series 1811) perform these investigations therefore seems questionable, considering the high additional costs involved.

Nuclear Regulatory Commission (NRC) Office of Investigations (OI) personnel have been misclassified as series 1811, "Criminal Investigator." To be classified in this series, an individual must meet most of the "frontline law enforcement" criteria, and have them largely constitute the position duties:

1. Perform investigations (long-term, complicated reviews).
2. Investigate individuals suspected of or convicted of violating criminal laws of the United States (employing agency must have criminal investigation authority).
3. Have the authority to carry weapons.
4. Have the authority to arrest, seize evidence, give Miranda warnings, execute search warrants.
5. Have a "rigorous" position which includes unusual physical hazards due to frequent contacts with criminals and suspected criminals, working for long periods without a break, and being in on-call status 24 hours a day.

OI duties and authorities do not match these criteria, and the NRC lacks statutory authority for performing criminal investigations. They lack arrest responsibilities, authority to carry firearms or other weapons, do not perform undercover work, do not execute search or seizure warrants, do not give Miranda warnings, and are not exposed to hazardous conditions nor inclement weather. Most work takes place in an office setting, and is not "rigorous." OI investigations involve violations of the regulations contained in 10 Code of Federal Regulations (Energy). None of their work is "frontline law enforcement work."

OI investigative personnel perform the duties and responsibilities of the series 1810 classification, and meet the 1810 guidelines and qualification requirements. Personnel classified in the 1810 series do not receive early retirement nor availability premium pay.

The result of the misclassification is that the NRC has unnecessarily paid OI investigators early retirement and "availability pay" (of 25% of their salary), totaling millions of dollars. The 25% availability pay is included in the OI investigators' basic pay, therefore raises the "high three" salary years utilized to determine retirement pay, and a more beneficial percentage is used to calculate retirement benefits.