



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

March 19, 1993

William C. Parler
General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Parler:

The Office of Government Ethics (OGE) has completed its third review of 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. Our objectives were to determine the program's effectiveness and its compliance with applicable laws and regulations. To achieve these goals, we reviewed the following program elements: the financial disclosure systems, ethics education and training, and advice and counseling services. The review was conducted during November 1992.

Our review disclosed that NRC has an effective ethics program. Minor improvements in the technical review of public financial disclosure reports and the implementation of procedures for tracking new entrant confidential financial disclosure reports would further enhance the overall effectiveness and integrity of the ethics program.

Background

NRC is an independent Federal agency established by the Energy Reorganization Act of 1974. This Act, along with the Atomic Energy Act of 1954, as amended, serves as the basis for the regulation of the U.S. commercial nuclear power industry. NRC's mission is to ensure that civilian uses of nuclear energy are carried out in a manner that protects the public health and safety, the environment, and our national security. NRC fulfills its obligations in the regulation of nuclear materials through a system of licensing and regulatory activities.

NRC is composed of five Commissioners, one of whom serves as Chairman. All are presidential appointees requiring the advice and consent of the Senate. In addition, NRC has approximately 3,335 full-time employees assigned to headquarters in Washington, DC and its five regional offices located near Philadelphia, Atlanta, Chicago, Dallas, and San Francisco.

All NRC employees are governed by the agency's standards of conduct currently found at 10 C.F.R. part 0. These regulations include restrictions on certain outside activities of employees and

Mr. William C. Parler
Page 2

prohibitions on ownership of certain financial interests. More specifically, the regulations prohibit Commissioners and all other employees, including special Government Employees (SGEs) who are members of advisory committees, at grades GS-13 and above or within occupational codes designated by NRC, from owning stocks, bonds, or other security interests issued by any entity engaging in or seeking to engage in the field of commercial nuclear energy. The prohibition also applies to the spouse, minor child, or other members of the immediate household of the employee. Annually, NRC publishes a list of prohibited securities, and each employee subject to the prohibition is required to sign a certification either that he or she does not own prohibited securities or, if owned, a certification identifying the securities along with disclosure of the method and time of acquisition and when the employee will dispose of the prohibited securities. NRC may allow retention of the prohibited securities where divestiture is deemed to be inequitable. NRC planned to supplement OGE's new executive branch-wide standards of conduct at 5 C.F.R. part 2635, which became effective on February 3, 1993, to continue the existing restrictions.

NRC's General Counsel serves as the Designated Agency Ethics Official (DAEO) and is responsible for management of the ethics program. The Assistant General Counsel for Legal Counsel, Legislation and Special Projects is the Alternate DAEO. However, the day-to-day administration of the ethics program is carried out by the Deputy Assistant General Counsel/Legislative Counsel who is assisted by three senior attorneys and three paralegal specialists. The senior attorneys function as Deputy Counselors within the Office of the General Counsel (OGC). In addition, NRC has five regional counsels who work part-time on ethics-related matters that include routine counseling. However, most written counseling is provided by the Deputy Counselors at headquarters.

Public Financial Disclosure System was Generally Effective

The public financial disclosure system is jointly administered by the Office of Personnel (Personnel) and OGC. Personnel provides instructions and forms to new employees when they are appointed to positions which require the filing of a public financial disclosure report. On a weekly basis, Personnel provides OGC with a list of personnel changes including newly hired employees, Commissioners and SGEs, and those who have terminated employment with NRC. This list is used by a paralegal specialist within OGC to ensure all reports are filed. On an annual basis, Personnel prepares and forwards a master list of incumbent filers to a paralegal

specialist in OGC who in turn distributes the instructions and forms to all annual filers.

The completed public financial disclosure reports are returned to OGC and are initially reviewed by a paralegal specialist who attempts to identify and correct any errors or omissions (e.g., a part left blank). Public reports of the Chairman, a Commissioner, an Office Director, or Deputy Director are compared with the filing of the previous year. All reports are then given to a Deputy Counselor for review and certification with the exception of the Commissioners, the Inspector General, and DAEO. The DAEO reviews and certifies the public reports of the Chairman, the Commissioners, and the Inspector General while the Chairman certifies the DAEO's report. During the review, ethics officials use lists of prohibited securities, nuclear industry suppliers, and contractors to identify prohibited financial interests as well as possible conflicts of interest. If a potential conflict of interest is found, ethics officials provide the employee and the employee's supervisor with a cautionary memorandum concerning 18 U.S.C. § 208. After review and certification, the reports and copies of any memorandums provided to an employee regarding conflicts of interest are maintained in OGC's files.

We examined 68 public financial disclosure reports filed during the 1992 filing cycle, including 18 reports required to be filed by SGEs. Based upon our examination we believe that the public financial disclosure system was generally effective. All of the reports were filed and reviewed within the required time frames. We did not note any substantive deficiencies. In accordance with 10 C.F.R. 0.735-21, filers were advised to recuse themselves, where necessary, from any matters before the Government affecting their financial interests or affiliations. However, a common technical deficiency revealed during our review was the failure of filers to fully disclose the names of mutual funds. As a result of our finding, OGC ethics officials have been advised by the DAEO to ensure that, in the future, employees disclose the full name of any specific mutual funds that they report.

Confidential Financial Disclosure System
Needs Improved Procedures for Tracking
New Entrants

NRC operates a centralized confidential financial disclosure system in which OGC reviews, certifies, and maintains reports filed by all NRC employees, including SGEs. Personnel compiles and submits a master list of annual filers to OGC. An OGC paralegal specialist forwards the list to the Office Directors and regional administrators, who are responsible for distributing instructions

and forms to filers. The filers submit their completed financial disclosure reports to their Office Directors or administrators who perform the initial review and sign the reports. Generally, reports are then forwarded to OGC where they are reviewed a second time by a paralegal specialist and are certified by a Deputy Counselor. However, in some cases regional counsels perform the final review and certification of the reports which are then forwarded to OGC for retention. As with the reviews of public reports, ethics officials use lists of prohibited securities, nuclear industry suppliers, and contractors to identify prohibited financial interests as well as possible conflicts of interest.

The confidential financial disclosure system process will change commencing with the 1993 filing cycle. Regional counsels who have performed reviews of the financial disclosure reports in the past will be removed from the review process. Also in 1993, Personnel will no longer compile the annual lists of NRC employees required to file confidential financial disclosure reports. Instead, OGC will require Office Directors to compile lists of all their employees who meet the filing criteria. Personnel will continue to identify new entrant employees required to file initial confidential reports.

As part of our review, we examined 146 of the 2,236 confidential financial disclosure reports filed by regular employees and SGEs during the 1992 filing cycle. With the exception of 5 reports which were filed between 2 and 14 days late, all reports were filed on time and no substantive or technical deficiencies were noted. OGC's review appeared very thorough and each instance of a potential conflict of interest was documented with an appropriate action (e.g., waiver, recusal, cautionary memorandum, etc.).

One weakness noted in the current system was a lack of assurance that employees appointed to covered positions will file confidential financial disclosure reports on a timely basis. While Personnel notifies each new entrant by memorandum of the requirement to file a confidential report with OGC, it does not take any additional steps to ensure compliance. OGC becomes aware of new appointments to covered positions only upon receipt of a confidential financial disclosure report from the employee. As a result of our finding, Personnel will provide OGC a copy of the memorandum used to notify employees of the requirement to complete a confidential financial disclosure report.

NRC Provides Appropriate Ethics
Education and Training

NRC provides a one-day orientation session for new employees which includes a 15-20 minute discussion on the standards of conduct. Employees also receive a copy of the standards of conduct and are required to certify its receipt by signature. Similarly, every departing NRC employee has an exit interview in which applicable post-employment restrictions are among the topics discussed. In both instances, employees are encouraged to contact OGC for further information and guidance.

NRC has taken additional steps, such as ad hoc training sessions, to keep employees aware of ethics regulations and concerns. For example, OGC conducted ethics training sessions in 1991 and 1992 for new Senior Executive Service officials and members of NRC's advisory committees. Post-employment restrictions have also been discussed at various training sessions. In 1991, the Chairman issued a memorandum to all employees entitled Information Regarding Conflicts of Interest and NRC anticipates distributing a newsletter to all employees regarding the new executive branch-wide standards of conduct.

Under NRC's ethics training plan for 1993, which was approved by OGE, the Deputy Counselors were to provide annual ethics training for most of NRC's employees and all SGEs. Deputy Counselors were to be assisted by representatives from the Office of the Inspector General, who were to make presentations at some of the ethics training sessions on waste, fraud, and abuse issues. NRC recently published a newsletter informing all employees of OGE's new training requirements at 5 C.F.R. §§ 2638.703 and 2638.704. Based upon our discussions with ethics officials and our review of the training materials provided to employees, we believe that NRC is providing an appropriate level of ethics education and training.

Counseling and Advice Services are
Consistent With Ethics Laws and Regulations

To evaluate the effectiveness of NRC's counseling services we examined written advice provided by ethics officials in 1991 and 1992. The subject files contained a wide range of ethics concerns such as: gift acceptance, outside activities, post-employment, financial interests (prohibited securities), and travel acceptance. The advice rendered appeared thorough and consistent with applicable statutes and regulations.

NRC Plans to Supplement the Executive
Branch-wide Standards of Conduct

Outside activities and prohibited securities are the two most significant ethics issues at NRC. NRC requires prior approval for outside activities only when employees are seeking nuclear industry-related employment. Employees engaged in other outside activities, such as selling real estate, need not obtain NRC approval. Ethics officials plan to supplement the executive branch-wide standards at subpart H of 5 C.F.R. part 2635 to require prior approval before employees engage in nuclear industry-related employment.

NRC also anticipates supplementing the executive branch-wide standards at subpart D of 5 C.F.R. part 2635 to continue the prohibition on the ownership of certain securities. However, NRC ethics officials are considering removing the prohibition placed upon advisory committee members and instead require members to recuse themselves from any participation in matters that would have a direct and predictable effect on those prohibited securities.

Conclusions

NRC has an effective ethics program which is in compliance with applicable ethics laws and regulations and has several characteristics of a model program. Reviews of financial disclosure reports are timely and thorough. Ethics advice and counseling services reflect careful analysis and appear consistent with applicable ethics laws and regulations. Compliance with OGE's new training regulation should ensure that employees are annually kept aware of the requirements for ethical conduct.

We believe minor improvements can be made to improve reporting of assets held by public filers and to ensure that all employees appointed to covered positions file confidential financial disclosure reports in a timely manner.

Recommendations

We recommend that you:

1. Ensure mutual funds are properly identified by the funds' complete name.
2. Establish a system to ensure that employees who are appointed to covered positions file a confidential financial disclosure report on a timely basis.

Mr. William C. Parler
Page 7

In closing, I wish to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the actions you have taken or plan to take in response to the recommendations of this report. A brief follow-up review will be scheduled six-months from the date of this report. Please contact Michael Shifrin at (202) 523-5757, extension 1155, if we can be of further assistance.

Sincerely,



Stephen D. Potts
Director

Report Number 93-009