

ETHICS PROGRAM INSPECTION REPORT

Agency: Federal Mine Safety and Health Review Commission

Report No.: 17-48I

Date: September 26, 2017

Period Covered by Review: January 1, 2016 – December 31, 2016

UNITED STATES OFFICE OF GOVERNMENT ETHICS

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in the Executive Branch

1.0 AGENCY DATA		
EMPLOYEES (as reported in the most recent Annual Ethics Program Questionnaire)		
1.1	Number of full-time agency employees	72
1.2	Number of agency special Government employees	0
1.3	Number of Presidentially appointed, Senate-confirmed (PAS) public financial disclosure reports required to be filed	6
1.4	Number of non-PAS public financial disclosure reports required to be filed	19
1.5	Number of confidential financial disclosure reports required to be filed	2
ETHICS PROGRAM		
1.6	Title of Designated Agency Ethics Official (DAEO)	General Counsel
1.7	Grade level of DAEO	SES
1.8	Title of Alternate DAEO (ADAEO)	Attorney Advisor
1.9	Grade level of ADAEO	GS-14
1.10	Title of the primary, day-to-day ethics program administrator	Deputy General Counsel
1.11	Grade level of the primary, day-to-day ethics program administrator	GS-15
1.12	Current number of full-time ethics officials	0
1.13	Current number of part-time ethics officials	3
1.14	Average full-time equivalent (FTE) value of a part-time ethics official(s) (For example, if part-time ethics officials at the agency generally devote 10 hours per week to ethics work, the average FTE value is 25%.)	10%
1.15	Number of reporting levels between the DAEO and the agency head	1
COMMENTS		
None		

2.0 LEADERSHIP					
COMPLIANCE REQUIREMENT			Yes	No	N/A
2.1	OGE has received an up-to-date designation from the agency head naming the DAEO. <i>See</i> 5 C.F.R. § 2638.202(c).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2.2	OGE has received an up-to-date designation from the agency head naming the ADAEO. <i>See</i> 5 C.F.R. § 2638.202(c).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
COMMENTS					
None					

3.0 ETHICS AGREEMENTS					
COMPLIANCE REQUIREMENT			Yes	No	N/A
3.1	During the period under review, all PAS officials complied with their ethics agreements. <i>See</i> 5 C.F.R. § 2634.804.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
3.2	During the period under review, all PAS officials complied with their ethics agreements in a timely fashion. <i>See</i> 5 C.F.R. § 2634.804.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
3.3	During the period under review, the agency notified OGE of ethics agreement compliance in a timely fashion. <i>See</i> DO-09-015.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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3.4	For all officials currently in PAS positions, the agency maintains documentation of actions taken to comply with ethics agreements. <i>See</i> 5 C.F.R. § 2634.804.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.5	For all officials currently in PAS positions, ethics agreements are maintained with their financial disclosure reports. <i>See</i> 5 C.F.R. § 2634.805.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COMMENTS				
(3.1 – 3.3) During the period under review, the Federal Mine Safety and Health Review Commission (FMSHRC) did not have any PAS officials who were required to take reportable actions to comply with their ethics agreement or any PAS officials who were required to notify OGE of their ethics agreement compliance.				

4.0	PUBLIC FINANCIAL DISCLOSURE (OGE Form 278, OGE Form 278-T)			
COMPLIANCE REQUIREMENT		Yes	No	N/A
4.1	The agency has written policies and procedures in place governing: <i>See</i> 5 U.S.C. app. IV, § 402(d)(1).			
4.1.1	• Collection of public financial disclosure reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.1.2	• Review/evaluation of public financial disclosure reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.1.3	• Public availability of public financial disclosure reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.2	The agency can demonstrate that late filing fees are collected or, where appropriate, waivers are issued when public filers do not timely file financial disclosure reports.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.3	Public financial disclosure reports are securely maintained. <i>See</i> OGE/GOVT-1.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.4	Public financial disclosure reports are retained in accordance with the retention requirements. <i>See</i> 5 C.F.R. § 2634.603(g)(1).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS		%		
4.5	Percentage of sampled non-PAS new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(b).	100%		
4.6	Percentage of sampled non-PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).	100%		
4.7	Percentage of sampled non-PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).	100%		
4.8	Percentage of sampled non-PAS public financial disclosure reports certified timely (within 60 days of receipt or later when additional information was being sought or remedial action was being taken). <i>See</i> PA-11-04.	83%		
4.9	Percentage of sampled PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).	80%		
4.10	Percentage of sampled PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).	N/A		
4.11	Percentage of sampled PAS annual and termination reports certified timely (within 60 days of receipt or later when additional information was being sought or remedial action was being taken). <i>See</i> 5 C.F.R. § 2634.605(a).	100%		
COMMENTS				
<p><u>Comments:</u></p> <p>(4.3) Public and confidential financial disclosure reports at FMSHRC are stored in several filing cabinets. During its onsite inspection, OGE observed that FMSHRC did not lock the filing cabinets that store financial disclosure reports as required. FMSHRC responded to OGE's concerns and agreed to keep the filing cabinets locked at all times, except when accessed by ethics officials and other authorized personnel. Therefore, OGE is not issuing a recommendation for corrective action.</p> <p>(4.4) OGE identified several public reports that FMSHRC had retained beyond the six-year retention period. FMSHRC subsequently destroyed all reports that had been retained for more than six years. Therefore, OGE is not issuing a recommendation for corrective action.</p> <p>(4.10) FMSHRC did not have any PAS termination filers during the period under review.</p>				

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5.0 CONFIDENTIAL FINANCIAL DISCLOSURE						
COMPLIANCE REQUIREMENT			Yes	No	N/A	
5.1	The agency has written policies and procedures in place governing: <i>See</i> 5 U.S.C app. IV, § 402(d)(1).					
5.1.1	• Collection of confidential financial disclosure reports			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.1.2	• Review/evaluation of confidential financial disclosure reports			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.2	Confidential financial disclosure reports are securely maintained. <i>See</i> OGE/GOVT-2.			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.3	The agency's OGE-approved alternative confidential financial disclosure system complies with plans approved by OGE. <i>See</i> 5 C.F.R. § 2634.905(a).			<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5.4	Confidential financial disclosure reports are retained in accordance with the retention requirements. <i>See</i> 5 C.F.R. § 2634.604.			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS			%			
5.5	Percentage of sampled confidential new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(b).			N/A		
5.6	Percentage of sampled confidential annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(a).			100%		
5.7	Percentage of sampled confidential financial disclosure reports certified timely (within 60 days of receipt or later when additional information was being sought or remedial action was being taken). <i>See</i> 5 C.F.R. §§ 2634.605(a), 2634.909(a).			100%		
COMMENTS						
<p><u>Comments:</u> (5.2) As noted above, during its onsite visit OGE observed that the filing cabinets that store FMSHRC's confidential financial disclosure reports were left unlocked. FMSHRC agreed to keep the filing cabinets locked at all times, except when accessed by ethics officials and other authorized personnel. Therefore, OGE is not issuing a recommendation for corrective action. (5.3) FMSHRC does not have an alternative confidential financial disclosure system. (5.5) FMSHRC did not have any new entrant confidential financial disclosure filers during the period under review.</p>						

6.0 INITIAL ETHICS ORIENTATION						
COMPLIANCE REQUIREMENT			Yes	No	N/A	
6.1	All initial ethics orientation material contains: <i>See</i> 5 C.F.R. § 2638.703(a) and (b).					
6.1.1	• Current contact information of relevant ethics official(s)			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.1.2	• Copy of the Standards of Ethical Conduct and any agency supplemental standards to keep or review; or • Summaries of the Standards, any agency supplemental standards, and 14 Principles for employees to keep			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.2	The agency can demonstrate that it has an effective process to ensure that new employees receive initial ethics orientations. <i>See</i> 5 C.F.R. § 2638.703(c).			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS			%			
6.3	Percentage of new agency employees who received initial ethics orientation within 90 days. <i>See</i> 5 C.F.R. § 2638.703.			100%		
COMMENTS						
None						

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7.0 ANNUAL ETHICS TRAINING						
COMPLIANCE REQUIREMENT			Yes	No	N/A	
7.1	All annual ethics training material contains: <i>See</i> 5 C.F.R. § 2638.704(b).					
7.1.1	• Current contact information of relevant ethics official(s)			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.2	• Review of the criminal conflict of interest statutes			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.3	• Review of the Standards of Ethical Conduct			<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.1.4	• Review of the 14 Principles			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.5	• Review of any agency supplemental standards			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.2	The agency can demonstrate that it has an effective process to ensure that covered employees receive annual ethics training. <i>See</i> 5 C.F.R. § 2638.704(c) and 705(c).			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS			%			
7.3	Public financial disclosure filers who completed annual ethics training. <i>See</i> 5 C.F.R. § 2638.704(a).			100%		
7.4	Confidential financial disclosure filers who completed annual ethics training. <i>See</i> 5 C.F.R. § 2638.705(a)(3).			100%		
COMMENTS						
<p><u>Concerns:</u> (7.1.3) OGE reviewed a video of FMSHRC's 2016 annual ethics training presentation. The bulk of FMSHRC's 2016 annual training presentation covered to the Hatch Act, with only a small portion dedicated to ethics topics. Attendees received hardcopies of the criminal conflict of interest statutes, agency supplemental standards, the 14 Principles, and contact information for FMSHRC's ethics officials. The Standards of Ethical Conduct were not reviewed during annual training as required.</p>						

8.0 ETHICS ADVICE AND COUNSELING						
COMPLIANCE REQUIREMENT			Yes	No	N/A	
8.1	Based on a sample collected by OGE, guidance provided by agency ethics officials to employees appears to be consistent with applicable laws and regulations.			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COMMENTS						
None						

9.0 RECOMMENDATION(S)			
#	Element	RECOMMENDATION	Compliance Due
1	7.1.3	<p><u>RECOMMENDATION:</u> Ensure annual ethics training fully meets applicable content requirements.</p> <p><u>AGENCY RESPONSE:</u> FMSHRC will provide annual ethics training that meets applicable content requirements. In presidential election years, FMSHRC will provide Hatch Act training separate from annual ethics training.</p>	November 3, 2017