



United States Office
Of Government Ethics

Ethics Program Review

Pipeline and Hazardous Materials Safety Administration

July 2010 Report

Introduction

OBJECTIVE, SCOPE, AND METHODOLOGY

As part of the Office of Government Ethics' (OGE) monitoring activities, OGE conducted a focused review of the financial disclosure program administered at the Pipeline and Hazardous Materials Safety Administration (PHMSA), United States Department of Transportation (DOT). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). OGE's primary objective was to determine the financial disclosure program's compliance with applicable ethics laws and regulations. OGE also evaluated processes and procedures to assess the strengths and weaknesses of PHMSA's financial disclosure system and its impact on the agency's ability to prevent and detect ethics violations through the use of financial disclosure reports.

To meet this objective, OGE's review was limited to the examination of both public and confidential financial disclosure reports that were required to be filed at PHMSA in 2009, covering calendar year 2008. Based on OGE's observation of PHMSA's master list of financial disclosure filers, OGE examined all 8 public financial reports and all 242 confidential financial disclosure reports. The eight public reports consisted of five incumbent reports, one new entrant report and two termination reports.¹ The confidential reports consisted of 112 OGE Form 450 reports, 116 Optional OGE Form 450 reports (OGE Form 450-A) and 14 new entrant reports. OGE examined the reports to evaluate whether they had been filed, reviewed and certified timely. OGE's on-site fieldwork for this review was conducted in September 2009.

RESULTS IN BRIEF

OGE found PHMSA's financial disclosure program to be well-managed. Reports were generally filed, reviewed, and certified timely and our examination revealed that all reports

¹OGE did not examine the public reports filed by the PHMSA Administrator, Deputy Administrator, Chief Counsel, and DEO as these reports are reviewed and certified by DOT's Designated Agency Ethics Official (DAEO).

Ethics Program Review: Pipeline and Hazardous Materials Safety Administration

examined appeared to be thoroughly reviewed as evidenced by the annotations or other documentation associated with the review. Assisting in the management of PHMSA's financial disclosure program were comprehensive written procedures relating to the collection, review, and evaluation of financial disclosure reports that were found to be in compliance with the Ethics Act. OGE also identified several model practices during its examination.

Despite the overall effectiveness of the financial disclosure program, OGE found two issues during the examination of the confidential system that the DEO must be mindful of during future filing cycles: monitoring the timeliness of new entrant filing and destroying confidential reports after a 6-year period. Since these issues were being corrected or OGE was assured would be corrected during future filing cycles, OGE is making no formal recommendation for improvement but has made some suggested improvements.

BACKGROUND AND ETHICS PROGRAM STRUCTURE

PHMSA was established in 2005 under the Norman Y. Mineta Research and Special Programs Improvement Act of 2004.² As one of the newest operating administrations within the DOT, PHMSA is responsible for protecting the American public and the environment by ensuring the safe and secure movement of hazardous materials to industry and consumers by all transportation modes, including the Nation's pipelines. Under the direction of the PHMSA Administrator, a Presidentially appointed and Senate confirmed appointee, the administration is comprised of a workforce of approximately 400 employees located throughout its headquarters office in Washington, DC and its five regional offices.

The ethics program at PHMSA is located within the Office of the Chief Counsel. The Deputy Chief Counsel serves as the Deputy Ethics Official (DEO) and is responsible for carrying out the day-to-day ethics functions. At the time of the on-site review, the DEO was in the process of training a new attorney to provide assistance to the ethics program. According to the DEO, the new attorney will be responsible for providing ethics advice and training and performing the initial review on all confidential financial disclosure reports filed at PHMSA. A paralegal specialist will also be trained to provide administrative support to the ethics program.

PRINCIPAL FINDINGS

Continue To Monitor The Timeliness Of New Entrant Filing

A new entrant confidential report must be submitted no later than 30 days after a filer enters a position or office that requires the filing of a financial disclosure report. *See* 5 CFR § 2634.903(b). OGE found that 4 of the 14 new entrant reports examined were filed late, one of which was identified as being filed more than one year late. During discussions with the DEO,

² Prior to the Act, the programs to ensure safety in both pipeline and hazardous materials transportation were part of DOT's Research and Special Programs Administration.

Ethics Program Review: Pipeline and Hazardous Materials Safety Administration

the review team was informed that while there have been challenges in working with PHMSA's Human Resources Division to receive timely notification on when new employees enter or transfer into a covered position in the past, considerable improvement has been made to address this concern. Specifically, new procedures were established to make the Human Resource Division responsible for including a notification of the financial disclosure requirements in the position vacancy announcements (or their equivalent) and for including the financial disclosure requirements in the position descriptions to which the requirement to file applies.

Beyond the need to comply with the regulatory requirement that new entrant reports are to be filed within 30 days, timely filing of new entrant reports enables an agency to provide timely and specific conflict of interest advice and to help prevent employees from committing ethics violations. OGE believes PHMSA's new procedures should help PHMSA to fully comply with the new entrant filing requirements in the future. Therefore, OGE is not making a recommendation for improvement. However, OGE strongly urges the DEO to continually monitor PHMSA's new entrant confidential filing process to ensure that these steps remain effective.

Ensure That Confidential Reports Are Destroyed After 6 Years

OGE Form 450, OGE Forms 450-As, and any alternative or supplemental forms must be retained for a period of 6 years after receipt, after which they are to be destroyed (unless needed in an ongoing investigation). *See* 5 CFR § 2634.604. During the examination, OGE identified a number of confidential reports that were older than 6 years, some dating back to 1999 and 2000 for several filers.³ After bringing this to the DEO's attention, OGE was assured that these reports would be destroyed and that all reports, hereafter, would be destroyed after a 6-year period, unless needed in an ongoing investigation. To ensure future regulatory compliance, OGE suggests that the DEO develop a process for annual destruction of confidential reports that were filed more than 6 years ago.

MODEL PRACTICES IDENTIFIED

Ethics laws and regulations are designed to act as a baseline that all agencies can reach. An ethics program that strives only to meet the baseline requirements is missing an opportunity to more fully advance the purpose of an ethics program. During an OGE ethics program review, OGE assesses the quality of the processes involved in administering the particular elements of an agency's ethics program. Further, OGE identifies model practices in use at an agency that enable it to exceed compliance with the regulatory requirements or identifies areas where an agency can implement model practices. During OGE's review at PHMSA, the following model practices were identified:

³ OGE noticed that these reports were filed during the time when filers were part of the Research and Special Programs Administration prior to the creation of PHMSA.

Ethics Program Review: Pipeline and Hazardous Materials Safety Administration

Succession Planning

In addition to maintaining written procedures for administering both the public and confidential financial disclosure systems, the review team found that PHMSA also has developed individualized procedures on the rendering of ethics advice and training and reporting alleged ethics violations. These procedures are a key ingredient in succession planning as they help maintain the consistent administration of an ethics program.

Proper Filing and Accountability

To address the issue of new entrant filing, the DEO established procedures that now make the Human Resource Division responsible for including a notification of the financial disclosure requirements in the position vacancy announcements (or their equivalent) and for including the financial disclosure requirements in the position descriptions to which the requirement to file applies.