

ETHICS PROGRAM INSPECTION REPORT

Agency: Marine Mammal Commission

Report No.: 17-071

Date: December 8, 2016

Period Covered by Review: January 2015 – December 2015

UNITED STATES OFFICE OF
GOVERNMENT ETHICS


Preventing Conflicts of Interest
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	13
1.2	Number of agency special Government employees	11
1.3	Number of Presidentially appointed, Senate-confirmed (PAS) public financial disclosure reports required to be filed	1
1.4	Number of non-PAS public financial disclosure reports required to be filed	3
1.5	Number of confidential financial disclosure reports required to be filed	15
ETHICS PROGRAM		
1.6	Title of Designated Agency Ethics Official (DAEO)	General Counsel
1.7	Grade level of DAEO	GS-15
1.8	Title of Alternate DAEO (ADAEO)	Executive Director
1.9	Grade level of ADAEO	SES
1.10	Title of the primary, day-to-day ethics program administrator	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	2
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%.)	2%
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"/>
COMMENT				
(3.1 – 3.3) No Marine Mammal Commission (MMC) PAS officials entered into ethics agreements during the period under review.				

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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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).	N/A		
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).	N/A		
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.	100%		
4.9	Percentage of sampled PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).	100%		
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%		
COMMENT				
(4.2) MMC did not have any filers subject to the late filing fee during the period under review. (4.5, 4.7 and 4.10) No reports in these categories were required to be filed during the period under review.				

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 type="checkbox"/>	<input type="checkbox"/>

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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).	11%		
5.6	Percentage of sampled confidential annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(a).	83%		
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).	87%		
COMMENTS				
<p><u>Comment:</u> (5.3) MMC does not have an alternative confidential financial disclosure system.</p> <p><u>Concern:</u> (5.5) Eight of nine new entrant confidential reports were filed late. All of the eight late reports were filed by special government employees (SGEs) who served on MMC's Committee of Scientific Advisors on Marine Mammals and are required by 5 C.F.R. § 2634.903(b)(3) to file before the committee's first meeting. The majority of these reports were filed approximately three months after the first committee meeting was held.</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	<ul style="list-style-type: none"> Current contact information of relevant ethics official(s) 	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.1.2	<ul style="list-style-type: none"> 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				

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	<ul style="list-style-type: none"> Current contact information of relevant ethics official(s) 	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.2	<ul style="list-style-type: none"> Review of the criminal conflict of interest statutes 	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.3	<ul style="list-style-type: none"> Review of the Standards of Ethical Conduct 	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.4	<ul style="list-style-type: none"> Review of the 14 Principles 	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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7.1.5	<ul style="list-style-type: none"> Review of any agency supplemental standards 	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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%		
COMMENT				
(7.1.5) MMC does not have supplemental standards of conduct.				

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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
COMMENTS				
<p><u>Comment:</u> (8.1) MMC was unable to furnish records of guidance provided by agency ethics officials to employees during the period under review because no in-depth guidance warranting a written record was issued during this period. OGE encourages agencies to memorialize advice provided for novel and complex situations.</p> <p><u>Agency Response:</u> During the period examined there were no novel or complex ethics issues that arose that warranted written memorialization. Two ethics projects worked on during 2015 resulted in written documents submitted to and cleared by OGE—an ethics agreement for the nominee for Chairman of the Commission and a waiver for a Committee member. Preparation of these documents required extensive consultation and guidance.</p> <p><u>Concern:</u> (8.1) At the outset of the inspection, MMC’s post-employment policy imposed a three-year cooling off period on commissioners and staff, and a one-year cooling off period on members of the Committee of Scientific Advisors. These extended cooling off periods were designed to prevent former employees from submitting direct funding requests to MMC. However, MMC lacks the independent statutory authority necessary to enforce these cooling off periods, which continue beyond the period prescribed in 18 U.S.C. § 207. During the course of the inspection, and in response to OGE’s recommendation, MMC amended their post-employment policy to adhere to the restrictions as set forth in 18 U.S.C. § 207. Since MMC promptly took the recommended corrective action, OGE has closed this recommendation.</p>				

9.0 RECOMMENDATION(S)				
#	Element	RECOMMENDATION	Compliance Due	
1	5.6	<p><u>RECOMMENDATION:</u> Ensure that all SGE’s serving on MMC’s Committee of Scientific Advisors on Marine Mammals file required confidential financial disclosure reports before the committee’s first meeting.</p> <p><u>AGENCY RESPONSE:</u> The Commission deviated from its normal filing process in the year examined. At the 2015 meeting, we discussed and explained the need to supplement the information collected in the financial disclosure form to identify additional conflicts and potential conflicts not otherwise captured. This was a onetime departure from the filing schedule. Reports will be required to be filed before the first Committee meeting in 2017 and subsequent years.</p>	9/15/17	

ETHICS PROGRAM INSPECTION REPORT

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2	8.1	<p><u>RECOMMENDATION:</u> Amend MMC's cooling off policy to adhere to the post-employment restrictions as set forth in 18 U.S.C. § 207.</p> <p><u>OGE COMMENT:</u> MMC amended its post-employment policy to reflect the restrictions set forth in 18 U.S.C. § 207. Therefore, OGE closed this recommendation prior to issuing this report.</p>	Closed
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