



United States Office
Of Government Ethics

Report Number 09-026

Highlights

Model Practices

- Prospective employees are screened for potential conflicts and are briefed on the ethics responsibilities of government service
- Ethics program staff is rated on the performance of their ethics duties
- NTSB posts ethics-related articles in the General Counsel's newsletter
- A self-assessment survey was conducted to determine the effectiveness of training

OGE Recommendations

- Repeal those portions of 49 CFR part 805 that have been superseded by 5 CFR part 2635
- Rescind the universal prohibition on employees acquiring or holding financial interests in a transportation enterprise
- Destroy public and confidential reports after a 6-year period in accordance with law and regulation
- Develop a process to ensure that new entrant confidential reports are filed no later than 30 days after an employee assumes a covered position or office
- Change its process to ensure that future annual training plans are completed by the beginning of each calendar year
- Provide at least 1 hour of initial ethics orientation to new employees when they enter on duty
- Include the name, title, office address, and phone number of the DAEO in any initial ethics orientation

National Transportation Safety Board Ethics Program Review

November 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the National Transportation Safety Board (NTSB). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

OGE found that NTSB has incorporated several model practices into its ethics program. Specifically, these model practices were found in the areas of training and program administration. OGE also found that NTSB has many deficiencies that need to be corrected. To ensure that corrective action is taken, OGE has made specific recommendations.

After receiving the draft report, NTSB started taking corrective action to address the identified deficiencies. Based on the information provided, it appears that NTSB has made positive improvements to its ethics program. OGE will follow up with NTSB 6 months from the date of this report's issuance. OGE stands ready to assist NTSB in implementing the recommendations as well as other program initiatives that NTSB may choose to undertake.

If you have comments or would like to discuss this report, please contact Trish Zemple, Associate Director, Program Review Division, at 202-482-9286.



**United States Office
Of Government Ethics**

Report Number 09-026

Ethics Program Review

National Transportation Safety Board

November 2009 Report

Introduction

OGE MISSION

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. *See* Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the National Transportation Safety Board (NTSB) focused on the elements listed below:

- Program structure
- Agency specific prohibitions, restrictions, and requirements
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Enforcement of ethics laws and regulations
- Ethics agreements
- Travel payments from non-Federal sources

Ethics Program Review: NTSB

Program Elements

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

PROGRAM STRUCTURE

NTSB's ethics program staff consists of the Deputy General Counsel, who serves as Designated Agency Ethics Official (DAEO), the General Counsel, who serves as Alternate DAEO, an Assistant DAEO, and a Paralegal Specialist. The ethics program staff performs ethics duties on a part-time basis. Despite the part-time nature of the staff's ethics duties, the duties are reflected in their position descriptions and performance evaluations. Rating an ethics official on the performance of ethics duties creates accountability and transparency and facilitates enduring ethics program effectiveness. OGE considers rating ethics officials on the performance of their ethics duties to be a model practice.

NTSB has begun a rudimentary form of succession planning by shifting duties, such as reviewing financial disclosure forms, providing training, and providing counseling, from the DAEO to other ethics staff. In the future, NTSB plans to shift notifying filers of the need to file and collecting financial disclosure reports from the DAEO to the ethics staff. OGE considers succession planning to be a model practice and encourages its use to facilitate enduring ethics program effectiveness. NTSB could take additional steps to further its succession planning. For instance, putting a succession plan in writing would create a framework for the ethics program that will last regardless of ethics staff turnover. The plan should address, among other things, the training needs of the ethics staff; how to maintain critical systems; how to retain critical knowledge; and how to preserve the relationship between the ethics office, its partners, and the ethics community. Succession planning, if properly implemented, can help ensure that an ethics program is consistently successful through any transitions in ethics staff.

AGENCY SPECIFIC PROHIBITIONS, RESTRICTIONS, AND REQUIREMENTS

NTSB Regulation

NTSB has a regulation at 49 CFR part 805 entitled *Employee Responsibilities and Conduct*. Portions of the regulation have been superseded by the *Standards of Ethical Conduct for Employees of the Executive Branch* (Standards) at 5 CFR part 2635. During OGE's review, NTSB's DAEO assured OGE that because 49 CFR part 805 has been superseded by the Standards, NTSB is not enforcing the regulation. However, OGE is concerned that NTSB employees may not be aware of this distinction and may rely on 49 CFR part 805 when considering their ethics responsibilities. For example, 49 CFR part 805 contains portions that cover financial interests, gifts, and outside activities that differ from the Standards. In addition, OGE notified agencies in 1991 and in 1995 that the portions of their regulations that were

Ethics Program Review: NTSB

superseded by the Standards had to be repealed and that any supplement to the Standards had to be done through the agency supplementation process. *See* DAEOgram issued on August 12, 1991 and DAEOgram DO-95-008 issued on February 15, 1995.

NTSB has worked off and on for over a decade to create a supplemental regulation. At the time of OGE's review, the DAEO stated that he wishes to revive efforts on the supplemental standards within the year. OGE stands ready to assist NTSB in this effort. However, any plans NTSB has for creating a supplemental regulation should not interfere with the revocation of the portions of 49 CFR part 805 that have been superseded by the Standards.

The Standards are intended to be a single, comprehensive, and clear set of executive-branch standards of conduct that is objective, reasonable, and enforceable. *See* E.O. 12731, § 201(a). Therefore, OGE recommends that NTSB evaluate the regulation at 49 CFR part 805 to determine which portions have been superseded by the Standards and repeal those portions.

Prohibition on Certain Financial Interests

NTSB prohibits all of its employees from acquiring or holding financial interests in a transportation enterprise. This prohibition is laid out in NTSB Board Order No. 10 (Order) which has been in existence since 1996. The section of the Order concerning prohibited financial interests states, in part, that "No [NTSB] employee or Member may acquire or hold a financial interest in a transportation enterprise or be employed or retained in employment with the [NTSB] if he or she holds or acquires a financial interest in a transportation enterprise." An agency may prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees. However, such a prohibition can only be implemented via supplemental regulation or separate statutory authority. *See* 5 CFR § 2634.403(a). NTSB does not currently have either mechanism.

By working with agencies to develop supplemental regulations, OGE can ensure that any additional restrictions placed on employees are merited and necessary. NTSB has circumvented this mechanism. Consequently, OGE cannot ensure that the prohibition on acquiring or holding a financial interest in a transportation enterprise is necessary. OGE recognizes that it may be appropriate to require individuals to divest of financial interests in order to prevent conflicts of interest. However, the universal prohibition on acquiring or holding interest in a transportation enterprise may only be implemented through a supplemental regulation. Therefore, OGE recommends that NTSB rescind its universal prohibition on acquiring or holding financial interests in a transportation enterprise and cease implementation of the prohibition in its counseling, ethics agreements, and financial disclosure reviews. If NTSB would like to prohibit employees from acquiring or holding a financial interest or a class of financial interests, OGE stands ready to assist in the process of developing a supplemental regulation. *See* 5 CFR § 2634.103 for procedures on requesting approval of supplemental regulations.

FINANCIAL DISCLOSURE SYSTEMS

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their

Ethics Program Review: NTSB

duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450). Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs in providing counseling to employees. *See* 5 CFR § 2634.104(b).

Retention of SF 278s

Public and confidential reports shall be made available to the public for a period of 6 years. After the 6-year period, the report shall be destroyed unless needed in an ongoing investigation. *See* 5 CFR § 2634.603(g)(1) and *See* 5 CFR § 2634.604(a) respectively. NTSB's DAEO was aware of the report retention requirement but simply failed to destroy public and confidential reports after 6 years as required. OGE recommends that NTSB destroy public and confidential reports after a 6-year period in accordance with 5 U.S.C. app. § 105(d), 5 CFR § 2634.603(g)(1) and 5 CFR § 2634.604(a).

Public Financial Disclosure System (SF 278)

To evaluate the filing, review, and certification of public reports at NTSB, OGE examined all 38 public reports required to be filed in 2008. The following is a summary of OGE's examination of the 38 reports. All 38 reports were filed, reviewed and certified timely. However, the technical review of several reports could have been improved. For example, some IRA accounts were improperly reported and some reports were not identified as to whether they were new entrant, incumbent, or termination reports. Because the technical review errors were not widespread and did not affect the ability to make conflict of interest determinations, OGE is not making a recommendation for improvement.

In addition, a few public reports included indications that filing extensions were granted, but no written requests for extensions or written evidence that extensions had been granted were evident in the official report files. NTSB acknowledged that there may not be a written record corresponding to every extension and that filers would occasionally be granted an extension in the course of a phone conversation. NTSB usually sends the filer an email to verify that a filing extension had been granted in the course of a phone conversation but NTSB acknowledged that this might not always be the case. OGE reminds NTSB that employees must request in writing an extension of time for filing and explain why such an additional extension of time is necessary. The reviewing official must then approve or deny such a request in writing and such records must be maintained as part of the official report file. *See* 5 CFR § 2634.201(f).

Ethics Program Review: NTSB

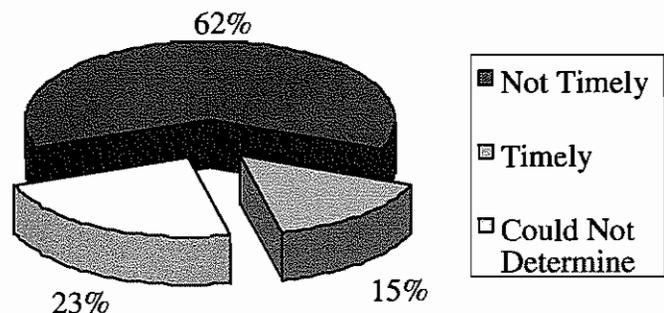
Confidential Financial Disclosure System (OGE Form 450/450-A)

To evaluate the filing, review, and certification of confidential reports at NTSB, OGE examined 59 of the 66 confidential reports required to be filed in 2008. The sample consisted of 13 new entrant reports and 46 annual reports. Once received, all 59 reports OGE examined were reviewed and certified timely.

Every 2008 annual report OGE examined was filed late. According to email records, NTSB notified annual confidential filers of the need to file on March 9, 2008, after the February 15, 2008 filing deadline. Because of the late filing in 2008, OGE examined the filing timeliness for annual reports filed in 2009. OGE found that all of the 2009 annual reports were filed timely. Based on this finding OGE believes that the late filing of annual reports is not a pattern at NTSB. Therefore, no recommendation for improvement is being made.

In OGE's examination of 13 new entrant reports it found that 8 new entrant reports, or 62 percent, were filed more than 30 days late. NTSB's DAEO stated that the high percentage of late filing may be due to the difficulty in identifying when an existing employee is promoted to a filing position. OGE recommends that NTSB develops a process for ensuring that new entrant confidential reports are filed no later than 30 days after an employee assumes a covered position or office described in 5 CFR § 2638.904(a). *See* 5 CFR § 2634.903(b).

Filing Timeliness of 2008 Confidential New Entrant Reports



OGE identified five certified reports with portions of the report not completed or with pages missing. By certifying reports, an ethics official is stating that he or she determined that the report is in compliance with applicable laws and regulations, which includes the completeness of the reports. *See* 5 CFR 2634605(b). Without complete information NTSB cannot ensure that apparent or actual conflicts of interests do not exist. NTSB should ensure that each required item on a report is complete before it is certified. Therefore, OGE suggests that NTSB take steps to correct the deficiencies on the five reports.

ETHICS TRAINING

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees. The nature of the training must be determined in writing by the beginning of each calendar year and include specific information.

Ethics Program Review: NTSB

Written Training Plan

OGE found that NTSB's 2007, 2008, and 2009 written training plans listed the intended content of initial and annual training in detail. However, the training plans did not include the following required elements:

- estimated number of employees who will receive verbal training,
- estimated number of employees who will receive written training, or
- estimated number of employees who will receive written training instead of verbal training.

NTSB amended the 2009 annual training plan to fix the problems OGE identified before this report's issuance. Therefore, OGE is not issuing a recommendation for improving that plan. However, because annual training plans for 2007, 2008, and 2009 were created after the beginning of their respective calendar years, OGE is recommending that NTSB change its process to ensure that future annual training plans are created by the beginning of the calendar year. *See* 5 CFR § 2638.706(b).

Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with an initial ethics orientation. An initial ethics orientation must include:

- the Standards;
- any agency supplemental standards (if applicable);
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least 1 hour of official duty time to review the items described above. *See* 5 CFR § 2638.703.

According to records provided by NTSB's DAEO and Human Resources office, NTSB provided initial ethics orientation to all employees hired in 2008. As part of the initial ethics orientation program, NTSB ethics program staff brief potential employees about the ethical responsibilities they will be subject to upon assuming a position in the executive branch. The briefings take place before employees begin work at NTSB, which allows NTSB to screen for potential conflicts and to create any necessary ethics agreements. The briefings cover the Ethics in Government Act, the Standards, the 14 General Principles, and potential conflicts that may exist. The briefings are an effective screening mechanism for potential conflicts.

The initial ethics orientation given to employees once they enter on duty needs improvement in two areas to meet compliance with regulation. First, initial ethics orientation needs to take 1 hour and employees must be given official duty time to review the Standards or summaries of the Standards and the 14 General Principles.¹ Verbal ethics training and time to

¹ Employees are not given copies of ethics materials during the briefings on a consistent basis but a summary of the Standards and the 14 General Principles are located on NTSB's Intranet. *See* note to CFR 2635 § 2638.703(a).

Ethics Program Review: NTSB

review ethics materials must total at least 1 hour in the same 90-day period. *See* 5 CFR § 2638.703(c). Second, initial ethics orientation must include the name, title, office address, and phone number of NTSB's DAEO and other ethics officials. *See* 5 CFR § 2638.703(b). It is important that new employees know the contact information of the DAEO and other ethics officials in case an ethics issue arises. During the review, OGE noted that neither of these requirements were being met. Therefore, to improve the initial ethics orientation program, OGE recommends that (1) NTSB provide at least 1 hour of initial ethics orientation to new employees when they enter on duty and (2) NTSB include the name, title, office address, and phone number of the DAEO and other ethics officials in any initial ethics orientation.

Self-Assessment

In the summer of 2008, NTSB surveyed new employees to determine the effectiveness of its initial ethics orientation. The survey found that the great majority of incoming NTSB employees were "Highly Satisfied" with the initial ethics orientation they received. OGE encourages agencies to use self-assessment to evaluate their ethics programs. Self-assessments help ethics officials improve the efficiency of their programs by identifying strengths and weaknesses. OGE considers the use of self-assessment tools to be a model practice.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal ethics training at least once every 3 years and written training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

In 2007 and 2008 NTSB met the annual ethics training requirements through the use of web-based training. In both years, the annual ethics training covered all of the required content. According to NTSB's DAEO, the web-based training module takes at least 1 hour to complete. In addition, some NTSB offices and the Board members receive in-person training. NTSB documents that employees receive annual ethics training by collecting certificates showing that training was received and entering this information into a spreadsheet. According to NTSB's DAEO, everyone at NTSB receives annual ethics training.

Ethics Program Review: NTSB

Other Ethics Training

From November 2006 through April 2009, NTSB posted 31 ethics-related articles in the General Counsel's newsletter, which is posted on the NTSB intranet. These articles cover areas such as the acceptance of gifts, seeking employment, and ethics staff updates. In general, posting these articles serves to build awareness of the ethics program and the ethical responsibilities of government service.

ETHICS COUNSELING

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. To evaluate the counseling provided by NTSB, OGE's NTSB Desk Officer analyzed samples of memorialized ethics counseling. OGE's NTSB Desk Officer found the counseling to be appropriate, accurate, and timely.

ENFORCEMENT

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

NTSB did not have any ethics-related disciplinary actions or criminal conflict of interest referrals to the Department of Justice during the time period covered by OGE's review. Additionally, NTSB does not have an Inspector General. The procedures for dealing with a possible ethics violation is outlined on NTSB's intranet. According to the procedures, if a possible ethics violation occurs, the Managing Director will most likely direct an investigation by an agency staff member. The Managing Director may also request the assistance of an Inspector General from another agency to conduct an investigation. NTSB's DAEO would refer any possible civil or criminal ethics violation that is found to have merit to the Department of Justice and notify OGE of those referrals.

Ethics Program Review: NTSB

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353. NTSB allows employees to accept travel payments from non-Federal sources on behalf of the agency and has a written procedure for approving such payments. NTSB timely filed with OGE the four required semiannual reports for the period covering April 2007 through March 2009.

Conclusion

OGE found that NTSB's ethics officials have taken steps to enhance its ethics program. The ethics office advises potential employees of the ethical responsibilities of employment in the executive branch, provides training beyond what is required, and surveyed employees to determine the effectiveness of initial ethics orientation. In addition, the ethics official's ethics duties are reflected in ethics official's position descriptions and performance appraisals. OGE considers these actions to be model practices.

However, NTSB's ethics program contains several deficiencies that must be corrected. To bring the NTSB's ethics program into compliance with regulatory requirements, OGE recommends that NTSB take the following actions:

1. Evaluate the regulation at 49 CFR part 805 to determine which portions have been superseded by the Standards and repeal those portions that have been superseded.
2. Rescind its universal prohibition on employees acquiring or holding financial interests in a transportation enterprise and cease implementation of the prohibition in its counseling, ethics agreements, and financial disclosure reviews.
3. Destroy public and confidential reports after a 6-year period in accordance with law and regulation.
4. Develop a process to ensure that new entrant confidential reports are filed no later than 30 days after an employee assumes a covered position or office.
5. Change its process to ensure that future annual training plans are completed by the beginning of each calendar year.
6. Provide at least 1 hour of initial ethics orientation to new employees when they enter on duty.
7. Include the name, title, office address, and phone number of NTSB's DAEO and other ethics officials in any initial ethics orientation.

NTSB has been made aware of these recommendations and, according to the DAEO, they have already taken steps towards addressing them. NTSB is applauded for its eagerness to

Ethics Program Review: NTSB

improve its ethics program. This table lays out the specific steps NTSB has taken to improve its ethics program.²

| Recommendation | NTSB Actions to Address Recommendation |
|----------------|---|
| 1 | NTSB has begun the process of reviewing 49 CFR Part 805 to determine what portions of it are appropriate for rescission. Additionally, NTSB has drafted the documents that will be required to notify its Board of the proposed action and drafted the rescission notice itself. |
| 2 | Statements concerning the prohibition on owning transportation enterprises have been eliminated from the screenings of potential employees. |
| 3 | NTSB reviewed old SF 278s and OGE Forms 450 and “pulled” all reports that were beyond the six year retention period. Additionally, NTSB instituted the use of a calendar system using Microsoft Outlook to help ensure that annual screening and destruction of reports older than six years occur. |
| 4 | In conjunction with the NTSB Human Resources Division, the DAEO has instituted two mechanisms by which they will be able to identify new filers: (1) The DAEO is now included on the Hire Team notification list, which will alert him when new employees are hired and (2) The DAEO is now included on the Reassignment Team notification list, which will alert him to employee reassignments and promotions. |
| 5 | NTSB has established, in Microsoft Outlook, a schedule for planning, drafting, and publishing the annual training plan in advance of the next calendar year. The scheduled notification is recurring to allow for compliance in future years and includes all ethics program staff that are responsible for the publication of the annual training plan. |
| 6 and 7 | The NTSB ethics team is now notified of when new employees are hired. After this notification, the DAEO will notify the new employee as to who the DAEO and other agency ethics officials are and notify the new employee of his or her responsibility to complete initial on-line ethics training and orientation within a certain period of time after beginning service with NTSB. The on-line training that each new employee will be required to complete within 30 days of arrival will, at the very least, take an hour. |

OGE stands ready to assist NTSB in implementing the recommendations, as well as other program initiatives that it may choose to undertake. OGE will follow-up with NTSB’s DAEO within 6 months from the date of this report’s issuance.

If you have comments or would like to discuss the report, please contact Trish Zemple, Associate Director, Program Review Division, at 202-482-9286.

² In addition to this table, the letter from NTSB’s DAEO informing OGE of the improvements that have begun at NTSB is attached. The attachments to NTSB’s letter can be obtained upon request.



NATIONAL TRANSPORTATION SAFETY BOARD

Designated Agency Ethics Official

MEMORANDUM

DATE: September 15, 2009

TO: Paul Bergstrand, Office of Government Ethics (OGE)

FROM: William C. Love, Deputy General Counsel/Designated Agency Ethics Official (DAEO) *Bill Love*

SUBJ: Ethics Program Review – National Transportation Safety Board

I wanted to take this opportunity to thank you for the diligent and thorough review of our ethics program and the briefing that you provided with regard to your findings, along with the areas that your report would cover regarding our program. Following the out brief that you and our Desk Office, Mark Stewart, provided concerning our program, we have been working to address the issues that you observed and the recommendations that you indicated that OGE would likely make. Please note the following:

- NTSB Regulation – enforcement of prohibition concerning financial holding in 49 CFR 805 and NTSB Board Order No. 10: As you observed, although we have not been enforcing the superseded regulation, 49 CFR 805, we had, generally, via Board Order No. 10, continued the practice of a broad prohibition against holding financial interests in transportation enterprises. In particular, the use of Board Order No. 10 and the prohibition was manifested in our screening and introductory screening of every new employee. As you know, as a part of this screening, we produce a report that describes whether the employee has financial interests that could result in a conflict of interest as they perform their duties.
 - Following your out brief, we modified our briefing to eliminate statements as to a broad prohibition, though we do inquire as to each employee's financial interests that may create a conflict.
 - As permitted in 5 CFR § 2635.402-403, we do evaluate the financial interests that an employee reports during our interview and briefing as to whether the interests create a conflict of interest that could interfere with an employee's performance of his duties. We also document this determination in a report.
 - Please see the revised checklist concerning our introductory briefing and interview which highlights financial conflicts and the issues that may arise, but does not include any statement or suggestion that the Board has a broad prohibition as to financial interests, as well as the report and related documents concerning a new employee where I did find issues with certain of his financial interests. You will note that our report no longer references a broad prohibition or Board Order No. 10. (Attachments 1-3).
- Destruction of Public and Confidential reports after six year period: As you observed, previously we have not had a means or method whereby we were ensuring that reports are not held beyond the 6 year period specified in law and regulation.

- o Following your out brief, we reviewed all of our SF 278 and OGE Form 450 files and reports and pulled all reports that were beyond the 6 year holding period. We documented the review and the action taken with regard to the old reports. (Attachments 4-5).
- o In order to ensure that all notifications and actions related to our Public and Confidential Financial Disclosure Reports are taken in a timely manner, including an annual screening and destruction of reports older than 6 years, we have instituted the use of an ethics program calendar system using Microsoft Outlook. (Attachments 6-7). Note in particular that all of the entries are recurring (so that they will continue beyond CY 2009 to assist with compliance in the future), and that they go to all ethics program personnel – to ensure that the requirement is noted by all responsible personnel. As to the destruction of old reports and files, see page 6 of Attachment 6 for the Outlook notification concerning OGE Form 450 and page 7 of Attachment 7 for the Outlook notification concerning SF 278. These Outlook notifications are intended to ensure that screening and destruction of old reports occurs.
- NTSB ensure that new entrant confidential reports are filed no later than 30 days after an employee assumes a covered position or office: In the past we have not had an adequate system for identifying new confidential filers, particularly in the case of employees who were promoted into positions that required a confidential report. Since the out brief following your program review, in conjunction with the NTSB Human Resources Division (AD-30), we have instituted two mechanisms by which we will be able to identify new filers:
 - o Hire Team Notifications: AD-30, in advance of a new employee's arrival, notifies certain offices that are required to take actions related to the employee of the specifics of the new employee's arrival. The NTSB ethics team is now included on the notification and the notice specifies the tasks for which the DAEO is responsible. In the case of new employees, that will include: 1) notifying the new employee as to who the Ethics Officials are; 2) notifying the new employee of his or her responsibility to complete initial on-line ethics training and orientation within a certain period of time after beginning service with the Board; and 3) determining if the employee is required to file a confidential report and, if so, notifying the employee and ensuring that the report is filed. Please see attachment 8 for an example of the Hire Team notification and the subsequent DAEO notification to the employee. A copy of the DAEO notification is provided to the new employee's supervisor (the POC).
 - o Reassignment Team: AD -30, on the occasion of a current employee's reassignment (including promotions), notifies certain offices that are required to take actions related to the employee of the specifics of the employee's reassignment or promotion. The NTSB ethics team is now included on the notification and the notice provides the specifics of the tasks for which the DAEO is responsible. In the case of reassigned employees, this will include: 1) determining if the employee is now required to file a confidential report and, if so, notifying the employee and ensuring that the report is file; and 2) in the case of an employee that was already required to file a confidential report, determining if the employee is still required by his or her duties to do so. Since the institution of this procedure, we have not had the occasion to receive a notice. See Attachment 9 for an example of what the AD-30 Reassignment Team announcement looks like and what the DAEO notice, in the case of a filer, will be.
- NTSB complete future annual training plans by beginning of calendar year: You noted in the audit that the NTSB's training plan for 2009, prior to our amendment during the review, was not in compliance with regulatory requirements as to it specifics (i.e., specific numerical estimates regarding training) and that we have also not published our training plans, as required before the commencement of the calendar year.

- As indicated by our amendment of the 2009 training plan, we have been reminded of the required elements of our training plan.
- In order to ensure it is created in a timely fashion, we have established, in Microsoft Outlook, a schedule for planning, drafting and publishing the report in advance of the next calendar year. See Attachment 10. Again, the scheduled notification is recurring (to allow for compliance in future years) and includes all ethics program staff that are responsible for the publication of the training plan.
- NTSB provide at least one hour of initial ethics orientation to new employees (and that the new employee is provided the name, title, office address, and phone number of the DAEO): You noted in your out brief that our initial interviews with each employee, while helpful with regard to screening new and potential employees with regard to ethics issues, were not, on the average, one hour in length and that it was not clear that the new employees had been provided the name, title, office address, and phone number of the DAEO. Since the out brief following the program review, we have instituted two procedures that address the points you raise:
 - Initial Briefing and Interview: In the initial interview and briefing of new and potential employees, we have, previously, discussed the 14 General Principles and, often, we provided to the new/potential employee a copy of the NTSB handout containing the principles. We are now, in the briefing specifically providing a copy to every new and potential employee and pointing out to the new and potential employee the information on the handout that identifies the NTSB ethics officials. (See Attachment 1, first highlighted entry on page 1, and Attachment 11).
 - Hire Team Notifications: As noted earlier, AD-30, in advance of a new employee's arrival, notifies certain offices that are required to take actions related to the employee of the specifics of the new employee's arrival. The NTSB ethics team is now included on the notification and the notice specifies the tasks for which the DAEO is responsible. In the case of new employees, the DAEO's tasks will include: 1) notifying the new employee as to who the DAEO and other agency ethics officials are; 2) notifying the new employee of his or her responsibility to complete initial on-line ethics training and orientation within a certain period of time after beginning service with the Board; and 3) determining if the employee is required to file a confidential report and, if so, notifying the employee and ensuring that the report is filed. Again, please see attachment 8 for an example of the Hire Team notification and the subsequent DAEO notification to the employee. Note that, by means of the DAEO notification in conjunction with the Hire Team Notification, the new employee will receive, for a second time, notice as to the name, title, office address, and phone number of the DAEO (as well as the same information for other ethics officials). Furthermore, the on-line training that each new employee will be required to complete within 30 days of arrival, which at the very least, takes an hour, will ensure that the new employee receives the ethics orientation that the regulation requires. We are aware that the orientation, by regulation, is required to take place within 90 days of arrival, but do not feel that this length of time will be necessary for Board employees.
- NTSB evaluate 49 CFR Part 805 to determine which portions have been superseded and rescind those portions that have been superseded: As suggested, following the out brief, we have begun the process of review of 49 CFR Part 805 to determine what portions of it are appropriate for rescission. In doing so, we have a draft of the documents that will be required to notify our Board of the proposed action and the rough draft of the rescission notice itself. (Attachments 12 and 13). The inclusion of these attachments is not intended to suggest actual progress has been made toward the rescission or publication of new supplemental standards, but rather, that we

have begun the effort. It is our intent to employ the assistance of the attorney in OGC that handles rule-making for the agency in order to complete this long overdue effort. As yet, we do not have a schedule for action, but anticipate that we will before the end of the month.

Attachments:

1. New Employee/Volunteer/Detailee Interview/Orientation Checklist
2. Mayo, Report of Briefing/Assessment of Financial Interests, September 1, 2009
3. Mayo, Conditional Offer of Employment/Required Divestiture, Ethics Agreement, undated
4. Public Filers (SF 278) – CY 2008, Old File/Report Destruction Log, July 30, 2009
5. Confidential Report Filers (OGE Form 450) – CY 2008, Old File/Report Destruction Log, July 30, 2009
6. OGE Form 450 Filer notices to DAEO & staff – Microsoft Outlook (recurring) – 6 pages
7. SF 278 Filer notices to DAEO & staff – Microsoft Outlook (recurring) – 7 pages
8. Hire Team notice, with subsequent DAEO notice to new employee (ethics officials, training requirement, confidential report requirement) – 3 pages
9. Reassignment Team Notice, with subsequent DAEO notice to new 450 filer – 3 pages
10. Ethics Training Plan notices to DAEO & staff – Microsoft Outlook (recurring) – 3 pages
11. NTSB DAEO Memorandum – Principles of Ethical Conduct – with notice regarding contact information for ethics officials – 1 page, August 2009
12. Staff Memo to Board of the NTSB regarding rescission of parts of 49 CFR Part 805
13. Initial draft of notice of rescission, 49 CFR Part 805