

Report of Investigation: Joseph Goffman, Assistant Administrator, Office of Air and Radiation

August 27, 2024 | Report No. 24-N-0054

REDACTED VERSION FOR PUBLIC RELEASE

The full version of this report contained controlled unclassified information. This is a redacted version of that report, which means the controlled unclassified information has been removed. The redactions are clearly identified in the report.



Abbreviations

C.F.R.	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
EtO	Ethylene Oxide
█	█
HFC	Hydrofluorocarbon
MCM	Miscellaneous Coating Manufacturing
OAR	Office of Air and Radiation
OGC	Office of the General Counsel
OGE	Office of Government Ethics
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPEEE	Office of Public Engagement and Environmental Education
U.S.C.	United States Code

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Table of Contents

Chapters

1	Introduction	1
	Summary.....	1
	Methodology	3
	Factual Background	3
	Analytic and Legal Framework	10
2	Goffman’s Participation in the Miscellaneous Coating Manufacturing Rulemaking	15
	Findings of Fact.....	15
	Analysis.....	21
	Conclusion	24
3	Goffman’s Participation in Preparations for the Bipartisan Infrastructure Law and Inflation Reduction Act Meeting with External Parties	25
	Findings of Fact.....	25
	Analysis.....	30
	Conclusion	32
4	Goffman’s Participation Involving [REDACTED]	33
	Findings of Fact.....	33
	Analysis.....	37
	Conclusion	40
5	Goffman’s Participation in the Commercial Sterilization Rulemaking	41
	Findings of Fact.....	41
	Analysis.....	54
	Conclusion	58

Appendixes

A	Global Industry Classification Standard Banks and Financial Services.....	60
B	Global Industry Classification Standard Health Care Equipment & Services and Pharmaceuticals, Biotechnology & Life Sciences	62
C	EtO Questionnaire Response	64

Introduction

Summary

On February 2, 2023, the U.S. Environmental Protection Agency Office of Inspector General Administrative Investigations Directorate initiated an investigation into EPA official Joseph Goffman’s potentially improper participation in the Miscellaneous Coating Manufacturing, or MCM, rulemaking under the National Emission Standards for Hazardous Air Pollutants. During the time period relevant to this investigation, Goffman was a political nominee performing the nondelegable duties of assistant administrator for the Office of Air and Radiation, or OAR. Before we initiated this investigation, Goffman self-disclosed his participation in the MCM rulemaking to the EPA Office of the General Counsel, or OGC, and subsequently to the OIG. Goffman’s self-disclosure was related to his financial interest in “commodity chemicals” or “paint” based on his financial holdings in Sherwin Williams, as indicated in his Recusal Statements.¹ Our investigation sought to determine whether Goffman complied with his federal ethical obligations.

We later expanded the scope of our investigation to include three additional matters that involved potential ethics violations: (1) Goffman’s preparations in January and February 2023 for the EPA’s “Bipartisan Infrastructure Law and Inflation Reduction Act Roundtable” held on February 2, 2023;² (2) Goffman’s participation in November and December 2022 in reviewing a hydrofluorocarbon, or HFC, allowance allocation request by [REDACTED], pursuant to the American Innovation and Manufacturing Act; and (3) Goffman’s participation from March 2021 through April 2022 in the National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review rulemaking, which we hereafter refer to as the Commercial Sterilization rulemaking.

As explained in this report, our investigation found the following by a preponderance of the evidence:³

- In all four matters, Goffman failed to assess whether specific parties or industries that were involved posed a potential financial conflict-of-interest. As a result, he did not refer them for a

¹ A Recusal Statement is a memorandum from an employee with a financial or employment-based conflict-of-interest that is prepared for the EPA administrator and that documents those interests, represents that the employee has a continuing obligation to recuse from participating personally and substantially in matters that involve those interests, and outlines an agreed-upon approach for assessing those conflicts. This agreed-upon approach is referred to as a “screening arrangement” or “directive and conclusion section.”

² The parties and exhibits in this investigation referred to the Infrastructure Investment and Jobs Act as the “Bipartisan Infrastructure Law” or “BIL.” See discussion *infra* in Chapter 2 on “Goffman’s Participation.” For that reason, we also refer to it as the Bipartisan Infrastructure Law in this report.

³ Preponderance of the evidence is generally the burden of proof that agencies must meet to support any adverse action that they issue to address employee misconduct. 5 U.S.C. § 7701(c)(1)(B). It is defined as “the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.” 5 C.F.R. § 1201.4(q).

financial conflicts-of-interest screen and recuse himself from the matters pending the determination of that screen.

- Goffman held financial interests in the MCM and Commercial Sterilization rulemakings and failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition when he participated in both rulemakings.

Our investigation did not substantiate the allegation that Goffman failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition when he participated in activities related to the “Bipartisan Infrastructure Law and Inflation Reduction Act Roundtable.” Our investigation was inconclusive as to whether Goffman met his ethical obligations under the federal financial conflicts-of-interest prohibition when he participated in the review of the [REDACTED] HFC allowance allocation request.

We referred these matters to the civil division of the United States Attorney’s Office for the District of Columbia, and they were initially accepted for investigation but later declined. We did not make a criminal referral of these matters to the U.S. Department of Justice because we did not identify evidence that Goffman’s conduct was willful or that he intended to financially benefit from his participation.

On June 26, 2024, we provided Mr. Goffman with a tentative conclusions letter containing our preliminary report of investigation and gave him an opportunity to review and comment before we finalized our report. In his response provided through his counsel, dated July 29, 2024, Mr. Goffman disagreed with our conclusions and asserted that he committed no violation of any kind.⁴ Mr. Goffman asserted that he implemented a robust screening arrangement and relied upon an “experienced” screener to perform a conflict-of-interest assessment on each communication and calendar invitation that he received. If a matter had inadvertently slipped past his screener, he took corrective action in the form of seeking guidance and/or self-reporting to OIG. Mr. Goffman asserted that there was no credible evidence that he had actual knowledge that he might have a financial interest in the MCM and Commercial Sterilization rulemakings. He also asserted that he did not participate substantially in the MCM rulemaking. Finally, Mr. Goffman asserted that his outreach to OGC Ethics on the Commercial Sterilization rulemaking demonstrated that he did not have prior knowledge of any potential conflict and showed his “rigorous adherence” to his screening arrangement.

After carefully considering Mr. Goffman’s response, we amended some sections of the report but did not alter our original conclusions.⁵

⁴ We originally requested Mr. Goffman’s response by July 8 but granted his request for an extension to July 29 due to his overseas travel and his wish to seek the assistance of counsel in reviewing and responding to the preliminary report. Mr. Goffman’s counsel was retained on or about July 2 and subsequently requested an additional extension to August 30 for Mr. Goffman’s reply. This additional extension request was denied by the OIG.

⁵ While we included what we believe is a reasonable synopsis of Mr. Goffman’s response, we provide a copy of the full response with this report.

This report summarizes the evidence we uncovered during our investigation. We introduce the necessary factual background and legal authorities, and we then cover each of the four matters that we investigated in separate chapters.

Methodology

During our investigation, we conducted 11 interviews with EPA employees. We also reviewed the email communications of relevant EPA personnel, witness and subject responses to written questions, and documents collected during the investigation.

Factual Background

Goffman was sworn in as the principal deputy assistant administrator for the OAR on January 20, 2021.⁶ In that capacity, he performed the duties of the assistant administrator for the OAR until January 31, 2024, when he was confirmed by the Senate for the official role. Goffman previously held senior positions within the OAR from October 2009 through January 2017, including associate administrator for climate and senior counsel.

As assistant administrator, Goffman is the highest ranking official within the OAR. The OAR develops national programs, policies, and regulations for controlling air pollution and radiation exposure. In fiscal year 2023, the OAR employed over 1,700 full-time staff and had an operating budget of over \$950 million.

The Action Development Process for EPA Rulemakings

Goffman testified that reviewing or participating in “a very high volume” of rulemakings, guidances, and correspondence is a major aspect of his duties. Goffman estimated that he typically reviewed up to ten rulemaking actions per week. As we discuss in separate chapters in this report, Goffman was involved in rulemakings that could impact private sector entities where he held a financial interest. It is important to understand the EPA rulemaking process in order to assess Goffman’s participation.

The EPA has an Action Development Process for drafting regulations. That process includes five major stages. As necessary, Stages 2 through 4 may be covered twice, once for Proposed Rules, which are also referred to as Draft Actions, and once for Final Rules, which are also referred to as Final Actions:

- *Stage 1: “Tiering the Action.”* There are three rulemaking tiers. The EPA Office of Policy assigns the tier for each rulemaking based on its “scope, cost, and level of impact.” Based on that complexity assessment, the tier decides the rule’s development process. Under the Action Development Process, “the number of steps and level of management approval varies by tier,” as does the work product created. Accordingly, tier assignment affects the level of assistant administrator involvement and the type of briefings that take place throughout the rulemaking.

⁶ Goffman held this title because he was not yet nominated for assistant administrator until March 8, 2022, and not Senate confirmed until January 31, 2024.

- *Stage 2: “Developing the Proposed Rule/Draft Action.”* In this stage, the lead program office and an action development workgroup prepare the Proposed Rule.⁷ This stage includes key meetings that set the research and rule structure landscape and that are known as “Early Guidance” and “Options Selection.”⁸ Whether and how an assistant administrator or the EPA administrator participates at this stage depends on the rulemaking’s assigned tier, with Tiers 1 and 2 entailing more involvement.
- *Stage 3: “Requesting OMB Review (if necessary).”* In this stage, the Agency must submit the rule to the Office of Management and Budget, or OMB, to assess its significance. Rules that are deemed significant require further OMB review, which may lead to feedback from or proposed changes by the OMB.⁹ Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993).
- *Stage 4: “Requesting Signature, Publishing an Action in the Federal Register, and Soliciting and Accepting Public Comments.”* Most regulatory actions require the EPA administrator’s signature unless delegated. An assistant administrator is responsible for “requesting the Administrator’s signature via an Action Memorandum.”
- *Stage 5: “Developing the Final Action.”* The action development workgroup considers and incorporates public comments as necessary. This stage may require repeating some, if not all, of Stages 2 through 4 to arrive at the Final Rule. In this stage, each OAR rulemaking is reviewed at the division level, at the office level, by the OAR Office of Air Policy and Program Support, and by the OAR Immediate Office.¹⁰ Upon arriving at the OAR Immediate Office, rulemakings are reviewed by the chief of staff prior to distribution to the leadership team, which includes the assistant administrator and others, for concurrence, signature, or recommendation.

⁷ Workgroups are responsible for “preparing basic documents,” “obtaining appropriate management guidance,” “collecting data,” “consulting with external constituencies,” “conducting analysis,” “developing options,” and “preparing the action” for a rulemaking; in doing so, the workgroups are responsible for complying with any applicable laws and guidance governing action development. The lead program office working on a rulemaking formally charts the action development workgroup, which may also include representatives from other program offices.

⁸ “Early Guidance” meetings involve “staff members and senior managers from all participant offices” to establish “policy priorities” and communicate “expectations to the work group.” The Action Development Process includes that “the lead office should provide participating AAs/RAs [assistant administrators/regional administrators] with meaningful opportunities to contribute to Early Guidance decisions” for Tiers 1 and 2 actions. At the “Options Selection” part of the process, outstanding issues are discussed, and the workgroup presents possible options or recommendations to incorporate into the rulemaking. As part of the Action Development Process, “the lead office schedules an Options Selection meeting either with the Administrator or Deputy Administrator (A/DA) for Tier 1 actions or with the lead AA/DAA [assistant administrator/deputy assistant administrator] for Tier 2 actions.”

⁹ A significant regulatory action includes, among other categories, any action that is likely to result in a rule that may have an annual effect on the economy of \$200 million or greater or that results in a rule that may “adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.” Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993), Exec. Order No. 14094, 88 Fed. Reg. 21879 (Apr. 11, 2023).

¹⁰ During the time period covered by this investigation, the OAR Immediate Office included, in part, the assistant administrator, three deputy assistant administrators, the chief of staff and assistant chief of staff, and senior advisors.

Tiers 1 and 2 rulemakings garner a higher level of leadership interest and involvement. Testimony from both leadership and responsible office staff uniformly described the OAR Immediate Office leadership team's involvement in Tier 3 rulemakings as minimal. The [REDACTED],¹¹ as well as the chief of staff, testified that Tier 3 rulemakings follow a "routine process for developing the information" with day-to-day work at the "programmatic level" or "by the responsible office within OAR." [REDACTED] also said that a team from the responsible program office briefs the leadership team "where necessary" and the "level of engagement and frequency from leadership" varies by rulemaking. For noncomplex Tier 3 rulemakings, leadership may receive only a briefing memorandum during rule development and would then review the Final Rule package for concurrence, as opposed to being orally briefed throughout the rulemaking.

Financial Conflicts-of-Interest and Recusal Statements

Goffman is required to annually report financial holdings over a certain dollar figure during his federal service. 5 U.S.C. § 13103(d). These annual disclosures are reported through the following Office of Government Ethics, or OGE, form: OGE Form 278e, Public Financial Disclosure Report.¹² 5 C.F.R. § 2634.601(a)(1).

Goffman is also required to recuse himself from (1) "specific party" matters where his holdings are above \$15,000 and (2) "matters of general applicability" where his holdings are above \$25,000 for any one entity or \$50,000 combined for multiple entities affected by the matter.¹³ 5 C.F.R. § 2640.103; 5 C.F.R. § 2640.202(a) and (c). The defined terms in quotations are later explained in this report. Holdings above these dollar amounts are considered *disqualifying financial interests*, meaning that Goffman must recuse himself from EPA actions involving these "specific party" or "general applicability" matters.

Under the discretion afforded to agencies by the OGE, the EPA has implemented Recusal Statements to document an employee's recusal obligations and make them clear to others. *See e.g.*, U.S. Off. of Gov't Ethics, LA-14-06, Flexibility in Ensuring and Documenting Compliance with Ethics Agreements (Nov. 4, 2014). A Recusal Statement is a memorandum that the OGC Ethics Office, hereinafter referred to as OGC Ethics, prepares for an employee with any potential financial or employment-based conflicts-of-interest. Recusal Statements document those interests, represent that the employee has a continuing obligation to recuse from participating personally and substantially in matters that involve those interests, and

¹¹ Unless otherwise noted, all future references to "[REDACTED]" in this report are to this position.

¹² This form is officially titled an "OGE Form 278e." In addition to annual disclosure reports, covered officials must file periodic transaction reports for certain financial transactions. 5 U.S.C. § 13105(l). This periodic financial reporting is done by completing an OGE Form 278-T, Periodic Transaction Report. 5 C.F.R. § 2634.601(a)(2).

¹³ These monetary thresholds are included within the implementing regulation for 18 U.S.C. § 208 and are characterized as "de minimis exemptions" that permit participation in conflicting matters where the employee's financial holdings fall below those thresholds. 5 C.F.R. § 2640.202(a) and (c). *See discussion infra* "Part 3: In a 'Particular Matter.'" Instead of recusing from a matter, employees can also divest of the financial interest or seek a waiver to participate in the conflicted matter. 5 C.F.R. § 2640.103. Neither option is addressed in this report because Goffman did not divest of the disqualifying financial interests or seek waivers to participate in any matter discussed in this report. The other provisions of 18 U.S.C. § 208 are also considered in this analysis and are later detailed in the "Analytical and Legal Framework" section of this report.

outline an approach for evaluating any conflicts related to those interests if they arise. This approach in Goffman’s Recusal Statements is called either a “screening arrangement” or a “directive and conclusion section.” The OGE “affords ethics officials discretion in determining when a screening arrangement is appropriate, what the content of such an arrangement should be,” and the form of documentation used. U.S. Off. of Gov’t Ethics, LA-14-06, at 3.

OGC Ethics worked with Goffman to draft three Recusal Statements—an initial statement and then two updated statements—based on his financial holdings to help him avoid conflicts-of-interest in his work. The Recusal Statements were formatted as memorandums from Goffman to the EPA administrator and signed by Goffman. An example excerpt is shown in the image below.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

April 8, 2021

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Joseph Goffman
Acting Assistant Administrator

TO: Michael S. Regan
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden’s Ethics Pledge that I signed.

Source: Goffman Recusal Statement (April 8, 2021).

In total, Goffman’s Recusal Statements included three charts, including one that listed over 60 specific party matter recusals and another that listed over 20 matters of general applicability sectors from which Goffman would be recused. The table below lists the dates of each of Goffman’s Recusal Statements.

Document	Date
Recusal Statement	April 8, 2021
Updated Recusal Statement	June 30, 2021
Third Updated Recusal Statement	June 22, 2023

The chart with the “specific party” recusals listed specific entities, or companies, in which Goffman held a disqualifying financial interest and could therefore not participate personally and substantially in any particular matter involving those entities. The chart with the “general applicability” sectors was a list created by OGC Ethics. As matters of general applicability, such as rulemakings, can impact an entity

without specifically naming it, sectors listed in Goffman's Recusal Statements were based on his financial interests in individual entities and were categorized by industry "sectors" using the Global Industry Classification Standard definitions. OGC Ethics chose this sector classification system to help employees spot potential conflicts-of-interest. For example, a rulemaking that would change agency standards for paint manufacturers could be a matter of general applicability. If an employee held a disqualifying financial interest in Sherwin Williams, a paint manufacturer, his recusal statement would list the "Commodity Chemicals (Paint)" sector in an effort to assist the employee in assessing whether he has a potential conflict-of-interest in that rulemaking even if Sherwin Williams isn't specifically referenced in rulemaking materials. Goffman's sector list, however, does not appear to be all-inclusive of every potential disqualifying financial interest that could arise in matters of general applicability.

Goffman's Recusal Statements each assigned the OAR chief of staff as his "screener" to generally assist in identifying and assessing when his job responsibilities presented a financial conflict-of-interest. As written in Goffman's June 2021 Updated Recusal Statement:

In order to ensure that I do not participate in matters relating to any of the entities listed above, *I will instruct [the Chief of Staff] to assist in screening EPA matters directed to my attention* that involve my former employer or my former clients. All inquiries and comments involving the entities or issue areas on my recusal list should be directed to the Chief of Staff without my knowledge or involvement. (emphasis added)

While the chief of staff would ideally screen matters for conflicts-of-interest before they came to Goffman's attention, testimony from both Goffman and the OGC Ethics director established that when Goffman directly received matters and identified a potential conflict, he was to step away from the matter and refer it back to the chief of staff for an ethics determination. Under his Recusal Statements, if the chief of staff was "unsure" whether a matter required Goffman to recuse himself, she was to consult with OGC Ethics for a determination. If the chief of staff determined that Goffman could not participate, she was to refer the matter to another individual without Goffman's "knowledge or involvement."¹⁴ The OGC Ethics director described the screening arrangement as "an additional layer" of "security" to flag problems and said that when there is a concern, the screener should consult with OGC Ethics.

Implementation of the Screening Arrangement

The chief of staff began serving as an ethics screener for the OAR leadership team in August 2019. While the chief of staff briefly discussed her role as a screener with both OGC Ethics and her immediate predecessor, she testified that she did not receive formal training or written guidance on how to perform a conflicts-of-interest screen. She understood her screener responsibilities as needing to

¹⁴ This arrangement is also consistent with OGE guidance. See U.S. Off. of Gov't Ethics, DO-04-012, Effective Screening Arrangements for Recusal Obligations, at 4 (2004) (noting that "an employee who receives written materials concerning a matter from which the employee is potentially recused --- should promptly forward the document to the person(s) designated in the screening arrangement document").

“screen” or “flag” matters and materials provided to Goffman based on her familiarity with Goffman’s recusal obligations. She believed it was OGC Ethics’ responsibility to make a determination on any potential conflicts-of-interest issue that she encountered in her screening.¹⁵

The chief of staff testified that she was designated as Goffman’s screener when he signed his first Recusal Statement. In that same month, she developed the screening process and briefed Goffman on it. As of late March 2023, she did not believe she had discussed the screening process with Goffman since “the very early months of his arrival.”

Goffman did not recall a specific conversation with the chief of staff about his screening arrangement or its implementation, but he believed that he “had to have had some conversations with” the chief of staff when she started as his screener. Goffman testified that because the chief of staff had performed the screener role previously, he believed that she already understood how to perform the role.

The chief of staff testified that, in practice, she implemented screening procedures for internal meeting requests, external stakeholder meetings, regulations or rulemakings, and correspondence sent to Goffman. Specifically, as part of her screening process, she would review four sets of incoming materials for references to each potential conflict-of-interest listed in Goffman’s Recusal Statements: meeting request forms, Goffman’s daily calendar, correspondence, and rulemakings. So that the chief of staff could screen meetings and events, other employees completed meeting request forms and provided them to the chief of staff for her to vet before adding the meetings and events to Goffman’s calendar. The chief of staff testified that she would review internal and external meeting request forms before presenting them to Goffman. Additionally, she would double-check Goffman’s calendar each morning to ensure that all events had been properly screened for recusal issues. To screen for correspondence and rulemakings, she reviewed the content of formal correspondence in the Agency’s correspondence management review system and rulemakings in the regulation management system for recused parties and sectors before either were sent for Goffman’s review. The chief of staff noted that her conflicts-of-interest screen for rulemakings could occur “in a lot of different places” throughout the Action Development Process and that when and how the assistant administrator participated in a rulemaking varied.

The chief of staff testified that she communicated with OGC Ethics at least monthly and sometimes multiple times a week about ethics questions. She said that OGC Ethics typically responded within 48 hours. Once a conflicts-of-interest determination was made, she communicated those determinations to the principal parties involved.

The chief of staff acknowledged some limitations in her screening process. She noted that she may not be included in correspondence that goes directly to Goffman, particularly email communications. She

¹⁵ The chief of staff’s understanding of her screening responsibilities appeared to conflict with the express language in the Recusal Statements. Similarly, the OGC Ethics director stated that the expectation was for the employee who holds a conflict and the screener to understand and apply the screening arrangement “rather than punting to [OGC Ethics] to make every determination.”

also testified that, when screening rulemakings, she typically reviewed only the rule's executive summary and nothing further if she did not identify any potential conflicts in the executive summary. If she did spot a potential conflict, her review consisted of a keyword search of the rest of the rule. The chief of staff testified that when she was out of the office, it was Goffman's responsibility to assess potential recusal issues and seek advice from OGC Ethics.

Both the chief of staff and Goffman each confirmed that there were no documented screening protocols or practices beyond the above-described screening arrangement within the Recusal Statements. The chief of staff stated that "there are no documents related to the design and general implementation of Mr. Goffman's screening arrangement," to the process she would use to perform a conflicts-of-interest screen, or to the types of documents she should screen.

The chief of staff testified that she distributed Goffman's Recusal Statements to other individuals within the OAR so that they could spot possible conflicts. The chief of staff maintained screening-related communications in a designated email inbox folder.

Goffman's Practice

Both Goffman and the chief of staff acknowledged that screeners assist individuals in assessing the presence of their financial interests and in implementing their recusal obligations, but both also testified that the employee with the disqualifying financial interest holds the ultimate personal "responsibility."

... the employee with the disqualifying financial interest holds the ultimate personal "responsibility."

Goffman testified that he trusted his screening process, believed his screener reviewed rulemakings and meetings before they were sent his way, and depended on this process to prevent him from participating in conflicted matters.

Goffman "guess[ed]" that he referenced his active Recusal Statement "once or twice every couple of months at least" prior to identifying the issues in his February 2023 self-disclosure to the OIG. Goffman testified that he is prompted to review his active Recusal Statement when briefings or memorandums about certain sectors arise. For efficiency purposes and because he does not often meet with individual parties, Goffman stated that he would review his sector recusals but "not so much" for specific parties.

Related Ethics Training

On January 21, 2021, shortly after joining the Agency, Goffman received his initial ethics training, which covered the federal financial conflicts-of-interest law, as required. 5 C.F.R. § 2638.304. On October 29, 2022, Goffman participated in mandatory annual ethics training for 2022 that was required for each EPA employee. 5 C.F.R. § 2638.308. That training addressed the criminal conflicts-of-interest statute by title on two slides. The first slide included a hyperlink to an OGE deck summarizing the criminal conflicts-of-

interest laws. The second slide included a hyperlink to an EPA-associated job aid that provided instruction on assessing conflicts-of-interest.¹⁶ Goffman testified that he did not recall being separately or specifically trained on his Recusal Statements or on how to assess conflicts-of-interest. However, he testified that, throughout his tenure, he discussed his Recusal Statements with OGC Ethics when he had questions about whether he could participate in certain matters.

The OGC Ethics director explained that, because a Recusal Statement is documentation of an individual's recusal obligations and because an individual undergoes ethics training prior to the Recusal Statement being drafted, she has an expectation that the individual has been informed of their recusal obligation "in multiple ways." According to the OGC Ethics director, specific instruction to Goffman and the chief of staff on the structure and execution of his screening arrangement was limited to an April 2021 OAR ethics training. The training also provided instructions on how to perform a conflicts-of-interest screen on invitations and otherwise encouraged employees and screeners to contact OGC Ethics with individual recusal questions as they arose.

Analytic and Legal Framework

Within each chapter of this report, we analyze Goffman's participation in the four matters we investigated under his ethical obligation to assess for financial conflicts-of-interest and avoid participating in matters where he has a financial conflict-of-interest.¹⁷

Ethical Obligation to Assess Financial Conflicts-of-Interest

Goffman holds the ultimate obligation to avoid participating in matters in which he has a financial conflict-of-interest even when a screening arrangement is in place. U.S. Off. of Gov't Ethics, DO-99-018, Recusal Obligation and Screening Arrangements (April 25, 1999).¹⁸ An employee who controls their own assignments and who becomes aware of the need to disqualify from participating in a particular matter based on a conflict-of-interest "should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified." 5 C.F.R. 2640.103(d)(1). As highlighted above, Goffman testified that his practice was for him and others to refer any matter that potentially implicated his financial conflicts to the chief of staff or OGC Ethics for a financial conflicts-of-interest screen. The chief of staff would also conduct her own review of matters for potential conflicts before they reached Goffman for review. *See* discussion *supra* at "Financial Conflicts-of-Interest and Recusal Statements."

¹⁶ Annual ethics training for 2023 was not due prior to Goffman's OIG interview; therefore, what was covered in that training was not relevant to the conduct discussed in this report.

¹⁷ EPA employees are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch. 5 C.F.R. part 2635. These include two standards on impartiality. 5 C.F.R. § 2635.101(b)(8); (14); *see also* 5 C.F.R. § 2635.501-502. Generally, the impartiality standards require that once an employee determines that a circumstance would cause a reasonable person with knowledge of the relevant facts to question their impartiality in a matter, the employee should not participate. Because we found no evidence that Goffman made such a determination, we did not include an analysis of the impartiality standards in this report.

¹⁸ "Employees should understand the continuing need to be alert to situations in which recusal may be necessary. Employees should not have the impression that recusal is accomplished simply because the necessary paperwork or documentation has been completed." U.S. Off. of Gov't Ethics, DO-99-018 at 4.

If the chief of staff had questions on potential conflicts, the screening arrangement instructed her to contact OGC Ethics to evaluate Goffman's recusal obligations. If Goffman was nonetheless confronted with a matter involving a potential financial conflict-of-interest, he was advised by OGC Ethics that he was obligated to cease participation pending a financial conflicts-of-interest determination. Goffman also testified that, under his Recusal Statements, "'recusal' means that [he] do[es] not participate at all, but instead notif[ies] [his screener] and take[s] no further action whatsoever." (emphasis in original) U.S. Off. of Gov't Ethics, DO-99-018, Recusal Obligation and Screening Arrangements (April 25, 1999).

Overview of the Federal Financial Conflicts-of-Interest Prohibition

The federal financial conflicts-of-interest statute, 18 U.S.C. § 208, is the prohibition against "acts affecting a personal financial interest."¹⁹ The purpose of the statute is to ensure "honesty in the Government's business dealings by preventing federal agents who have interests adverse to those of the Government from advancing their own interests at the expense of the public welfare." *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 548 (1961).

The statute prohibits officers or employees of the executive branch of the U.S. government, among other categories of employees, from participating "personally and substantially" in an official capacity in a "particular matter" where, to their knowledge, they or any other person specified in the statute has "a financial interest."²⁰ 18 U.S.C. § 208. This same activity is prohibited by federal ethics regulations in the Standards of Ethical Conduct for Employees of the Executive Branch. 5 C.F.R. § 2635.402; *see also* 5 C.F.R. § 2640.103. In sum, the prohibition involves four parts, and each of the four parts must be considered in a conflicts-of-interest analysis:

1. An officer or employee of the executive branch of the U.S. government.
2. Participates "personally and substantially" in their official capacity.
3. In a "particular matter."
4. Where they know that they have a financial interest.²¹

¹⁹ Pursuant to 18 U.S.C. § 216, offenses under 18 U.S.C. § 208 are subject to both criminal and civil penalties.

²⁰ The subsection list of exemptions in 18 U.S.C. § 208 are not relevant to these circumstances. 18 U.S.C. § 208(b), (d). Because Goffman is an employee of the U.S. government, we use "employee" to refer to individuals covered by the prohibition within.

²¹ The prohibition extends the employee's financial interests to the interests of the employee's spouse, minor child, or general partner; an organization where the employee serves in certain capacities; or a person or entity with whom the employee is negotiating or has an arrangement concerning prospective employment. 5 C.F.R. § 2640.103(a), (c). We refer to these as "imputed" interests.

Four parts that must be considered in a conflicts-of-interest analysis



Source: EPA OIG image.

We address Parts 1 through 4 in detail below. The employee's motive or intent are not considered when assessing whether a violation of the prohibition has occurred.²²

When confronted with a potential conflict-of-interest based on financial interests, employees must address the conflict in one of three ways: 1) recuse themselves from the matter, 2) divest of the financial interest, or 3) seek an agency waiver to participate in the matter or other exemption. 5 C.F.R. § 2640.103(d). For the remainder of this report, we only discuss Goffman's obligation to recuse because the investigation established that Goffman was neither granted a waiver to participate in the four matters nor divested of his financial holdings for any of the relevant entity or industries at issue during the relevant time period.

Part 1: Officer or Employee of the Executive Branch

The Standards of Ethical Conduct for Employees of the Executive Branch are clear that the prohibition applies to "an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, or any other individual subject to requirements of 18 U.S.C. § 208." See 5 C.F.R. §§ 2640.101, 102(b).

²² See U.S. Off. of Gov't Ethics, 87 x 7, Triggering of Restrictions in 18 U.S.C. § 208(a) (May 4, 1987) (noting that the restrictions of section 208 do not deal with the motive or good faith of the employee).

Part 2: Participates “Personally and Substantially”

The second part in a conflicts-of-interest analysis is whether the employee participated “personally” and “substantially.” “Personal and substantial” participation may include, but is not limited to, an employee participating in a “decision, approval, disapproval, recommendation, investigation or ... advice in a particular matter.” 5 C.F.R. § 2640.103(a)(2). “Personal” participation means to participate directly. *Id.* “Substantial” participation means that the employee’s involvement is significant and requires “more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.” 5 C.F.R. § 2640.103(a)(2). Participation may be substantial even if it is not outcome determinative. *Id.* Premeeting or preparatory participation in a matter can qualify. U.S. Off. of Gov’t Ethics, 92 x 25, Letter to a Designated Agency Ethics Official (December 10, 1992) at 4-5. While several peripheral actions “may be insubstantial,” “the single act of approving or participating in a critical step may be substantial.” *Id.* at 2 (citation omitted).

Part 3: In a “Particular Matter”

The third part of the conflicts-of-interest analysis is whether the action involves a “particular matter.” Particular matters “involve deliberation, decision, or action” focused on “the interests of specific persons” or a “discrete and identifiable class of persons.” 5 C.F.R. § 2640.103(a)(1). Those interests typically involve “a specific proceeding affecting the legal rights of the parties” or a transaction. 5 C.F.R. § 2640.102(l); *see also* U.S. Off. of Gov’t Ethics, DO-06-029, “‘Particular Matter Involving Specific Parties,’ ‘Particular Matter,’ and ‘Matter’” (2006) (“DO-06-029”) at 4 (quoting 5 C.F.R. § 2640.102(l)). As discussed by the OGE, participation in “informal, preliminary discussions about possible changes to agency standards governing a particular industry” qualifies because “[i]t is well-understood that ‘[m]uch of the work with respect to a particular matter is accomplished before the matter reaches its final stage.’” U.S. Off. of Gov’t Ethics, 06 x 8, Letter to a Designated Agency Ethics Official (Aug. 22, 2006) (“U.S. Off. of Gov’t Ethics, 06 x 8”) (quoting Former Officers and Employees—Conflict of Interest (18 U.S.C. § 207)—Contract—Disqualification Connected With Former Duties or Official Responsibilities, 2 Op. O.L.C. 313, 315 (1978)).

There are two types of particular matters in a conflicts-of-interest analysis: specific party matters and matters of general applicability.²³ In sum, specific party matters affect and focus on the legal rights of a specifically named party and are implicated when a government employee’s ownership interest in a specific entity meets a disqualifying threshold. 5 C.F.R. § 2640.102(l); *see also* 5 C.F.R. § 2640.202(a-b).

Particular matters of general applicability focus on the interests of “a discrete and identifiable class of persons” as opposed to a “matter” that impacts the general population. 5 C.F.R. § 2640.202(c); 5 C.F.R. § 2640.102(m); 5 C.F.R. § 2640.103(a)(1). For example, regulations that are only applicable to meatpacking companies, regulations that prescribe safety standards for trucks on interstate highways,

²³ For specific party matter recusals, disqualifying ownership interests are over \$15,000 in an individual entity. Disqualifying ownership interests for matters of general applicability sector recusals are \$25,000 for one such entity or \$50,000 for all sector entities combined. 5 C.F.R. § 2640.202(a), (c).

or “environmental regulations which would require considerable expenditures by all firms in the particular industry” are all considered particular matters of general applicability since they concern a discrete and identifiable group and not just a single entity or the general population. DO-06-029 at 8; Advisory Comms. —FDA—Conflicts of Interest (18 U.S.C. § 208), 2 Op. O.L.C 151, 155 (1978). Particular matters of general applicability are implicated when an employee owns enough of an interest in a specific entity or of multiple entities in that discrete class or group to warrant recusal. 5 C.F.R. § 2640.202(c).

Part 4: The Employee Knows They Have a Financial Interest in the Particular Matter

The final part of the federal financial conflicts-of-interest analysis is whether an employee knew that they had a financial interest in the particular matter. U.S. Off. Of Gov’t Ethics, 87 X 7, Triggering of Restrictions in 18 U.S.C. § 208(a) (May 4, 1987). Under OGE regulations, a “financial interest” means “the potential for gain or loss to the employee.” 5 C.F.R. § 2640.103(b). That financial interest can include an ownership interest in stock. *Id.*; *see also* U.S. Off. of Gov’t Ethics, LA-20-03, Conflict of Interest Analysis for Stocks under 18 U.S.C. § 208 (May 1, 2020) (“U.S. Off. of Gov’t Ethics, LA-20-03”). The OGE charges government employee shareholders with having knowledge of their financial holdings. *See generally, e.g.*, U.S. Off. of Gov’t Ethics, 93 x 37 at 2, Letter to a Special Government Employee (Dec. 20, 1993). Under this part, the particular matter must have “a direct and predictable effect” on the disqualifying financial interest. 5 C.F.R. § 2640.103(a).

A particular matter has a “direct” effect if there is a “close causal link” between the government action and “any expected effect” of the action on the financial interest. 5 C.F.R. § 2640.103(a)(3)(i). A particular matter has a “direct” and “predictable” effect if there is a “real” and not “speculative” possibility that the particular matter will affect a financial interest, but the degree or specific financial effect is “immaterial.” 5 C.F.R. §§ 2640.103(a)(3)(ii), 402(b)(1)(i-ii). For stock ownership, “financial interests of [a] company and the financial interests of the shareholders” are “one and the same.” U.S. Off. of Gov’t Ethics, LA-20-03 at 1. As a result, a government employee who owns stock in a company cannot participate in a particular matter when there is a real possibility that the matter will have a direct and predictable effect on that company’s financial interests, even if there is no resulting effect on stock price. *Id.* at 1-2.

Chapter 1

Goffman's Participation in the Miscellaneous Coating Manufacturing Rulemaking

Throughout the time period relevant to our investigation, Goffman held financial interests that required him to recuse himself from particular matters involving paint. Goffman participated in the MCM rulemaking, a matter that codified emissions limits and other workplace requirements for paint manufacturers. Prior to January 2023, both Goffman and his screener failed to assess the rulemaking for a potential conflict-of-interest with Goffman's financial holdings in Sherwin Williams. We also found by a preponderance of the evidence that Goffman failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition when he participated in the rulemaking despite holding a disqualifying financial interest.

Findings of Fact

This section provides an overview of the MCM rulemaking, Goffman's germane financial interest, and Goffman's participation in the Action Development Process for the MCM rulemaking.²⁴

The Rulemaking

The MCM rulemaking provided emissions limits and workplace requirements for paint, or "coatings," manufacturing operations in an effort to curb potential adverse health impacts. As described by witness testimony, the rule concerned dust that creates pollution in the form of particulate matter during the paint manufacturing process and created a standard for filtering that dust. The rulemaking was undertaken as a part of the Residential Risk and Technology Review amendments of the National Emission Standards for Hazardous Air Pollutants. MCM is one of several additional source categories of certain hazardous air pollutants that the EPA was obligated to address after an April 21, 2020 decision by the U.S. Court of Appeals for the D.C. Circuit involving the Louisiana Environmental Action Network, often referred to as the "*LEAN* decision." *La. Env't Action Network v. EPA*, 955 F.3d 1088 (D.C. 2020).

The Office of Policy deemed MCM a Tier 3 rulemaking. The rule was developed in coordination between the OAR, the Office of Enforcement and Compliance Assurance, the OGC, and the Office of Policy, and it required Goffman's approval. The rulemaking was led by a workgroup from the Sector Policies and Programs Division within the OAR Office of Air Quality Planning and Standards program office. Multiple witnesses testified that an environmental engineer and a supervisory environmental engineer were the two individuals primarily involved in researching and drafting the rule. The chief of staff testified that

²⁴ Stage 1 "Tiering the Action" is not considered because, as previously discussed, the tiering-level determination is made by the Office of Policy. This investigation also considered and dismissed routine emails or OAR briefing documents that Goffman received that mentioned the MCM rulemaking at a high level because several sources supported that he rarely and potentially never reviewed or edited those categories of materials.

because this was a Tier 3 rulemaking, “there would not likely have been many touches with the assistant administrator in the course of the development of the regulation.”

Goffman’s Financial Interest

At all time periods relevant to the MCM rulemaking, Goffman owned or had an imputed interest in Sherwin Williams, a paint and coatings manufacturer. Goffman’s holdings exceeded the matters of general applicability recusal threshold, and he was required to recuse himself from particular matters affecting his interest. To aid him in assessing matters of general applicability that may affect Sherwin Williams, OGC Ethics listed the “Commodity Chemicals (Paint)” sector on Goffman’s active Recusal Statement.

RECUSAL LIST – INDIVIDUAL SECTORS		
Agricultural & Farm Machinery	Apparel, Accessories, & Footwear	Banks
Commodity Chemicals (Paint)	Construction Machinery & Heavy Trucks	Construction Materials
Cruise Lines	Diversified Financials	Food & Staples Retailing
Healthcare Equipment & Services	Household & Personal Products	Household Appliances (lawn & garden tools)
Insurance	Internet & Direct Marketing Retail	Logistics
Media & Entertainment (including interactive media and services, and advertising)	Non-Alcoholic Beverages	Packaged Foods & Meats (snack food)
Pharmaceuticals, Biotechnology, & Life Sciences	Professional Services	Software & Services
Technology Hardware & Equipment	Telecommunication Services	Tobacco

Source: *Goffman Recusal Statement (June 30, 2021)*.

As previously described, OGC Ethics employs the Global Industry Classification Standard to define sector recusals. “Commodity Chemicals” are “companies that primarily produce industrial chemicals and basic chemicals ... [i]ncluding but not limited to ... commodity-based paints & pigments.” The MCM Final Rule identified the “Miscellaneous Coating Manufacturing Industry” as the sole industry affected by the action. National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing Technology Review, 88 Fed. Reg. 10842, 10843 (Feb. 22, 2023) [[Federal Register](#)]. Goffman’s financial holdings in Sherwin Williams fall within that industry.

Goffman’s Participation in the MCM Rulemaking

Goffman participated in two stages of the MCM rulemaking Action Development Process: Stage 4 of the Proposed Rule when he signed its Action Memorandum and Stage 3 of the Final Rule when he moved

the Final Rule package to the OMB.²⁵ The extent of Goffman's participation in each stage is detailed below. Testimony and supporting documentation from Goffman, others in the OAR Immediate Office, and the OAR program office responsible for the MCM rulemaking demonstrate that Goffman was not otherwise involved with the rulemaking.²⁶

Proposed Rule Stage 4: "Requesting Signature" on the Action Memorandum

On May 12, 2022, the OAR assistant chief of staff emailed Goffman the MCM Proposed Rule for his review, along with the Action Memorandum for his signature. Goffman's approval and signature on the Action Memorandum was required to send the MCM Proposed Rule to the EPA administrator for consideration. The deputy assistant administrator, who had already reviewed the MCM Proposed Rule package, was also copied. The assistant chief of staff's email included the following text:

Note: The MCM amendments finalized in 2020 did not address emissions of inorganic hazardous air pollutants (HAP) which consist of particulate matter (PM) emissions from addition of raw materials in powder form to **paint mixing vessels**. These proposed amendments define the MACT (maximum achievable control technology) standard for inorganic HAP of 0.014 gr/dscf for existing sources and 0.0079 gr/dscf for new sources. (emphasis added)

The MCM Proposed Rule included 11 references to "paint," and the Action Memorandum contained two.

While the chief of staff testified that the assistant chief of staff sent the package to Goffman, she also testified that she would have performed a conflicts-of-interest screen but did not specifically recall performing the screen. She acknowledged during her interview that the mention of "paint" in the email communications "was missed by several of us."²⁷

She acknowledged during her interview that the mention of "paint" in the email communications "was missed by several of us."

Later that same day, Goffman returned the signed Action Memorandum as an attachment with no written email response. Goffman testified, "I have no memory" of this action but acknowledged based on the written record that he received an email with the Action Memorandum attached, which he opened, read, and signed. Goffman speculated that based on his typical practice of undertaking "triage"

²⁵ As described above, Stages 2 through 4 of the Action Development Process may take place twice. See discussion *supra* at Introduction, "The Action Development Process for EPA Rulemakings."

²⁶ Goffman's lack of participation in other stages appears consistent with the Action Development Process for assistant administrator participation in Tier 3 rulemakings.

²⁷ As noted earlier, both the deputy assistant administrator and the assistant chief of staff received copies of Goffman's Recusal Statements to provide additional screens for potential conflicts. The deputy assistant administrator was also copied on the May 12, 2022 email and had already reviewed and concurred with the MCM Proposed Rule.

with Tier 3 nonsignificant packages, he would have undertaken a quick review for coherence and quality before signing. Nonetheless, if Goffman had not signed the Action Memorandum, or had not delegated or reassigned his authority, the rulemaking would not have gone forward.²⁸

Our investigation did not find evidence that Goffman was otherwise briefed or took additional action surrounding the MCM Proposed Rule.

Final Rule Stage 3: OMB Significance Determination

As discussed previously, the OMB is to review any rulemaking action deemed “significant” prior to it being issued. Exec. Order No. 14094, 88 Fed. Reg. 21879 (Apr. 11, 2023); *see also* Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993). A significance determination considers issues including the rule’s economic impact, its effect on the actions of other agencies, and the presence of novel policy issues. The EPA program office responsible for the rulemaking provides its significance recommendation and supporting documentation to the Office of Policy, which then transmits the recommendation to the OMB. The assistant administrator for the program office must sign off on the recommendation before it can be submitted to the Office of Policy and subsequently to the OMB.

On January 20, 2023, the chief of staff emailed Goffman an “OMB package for Miscellaneous Coating Manufacturing” for his “review and concurrence” to send to the OMB for review.²⁹ The deputy assistant administrator and assistant chief of staff were also copied. The chief of staff’s email noted that the deputy assistant administrator had reviewed and concurred on the materials and that the MCM rule had a court-ordered deadline of February 16, 2023. The attached materials included an Action Memorandum, an “Action Rollout Communications Plan,” the draft Final Rule text for the Code of Federal Regulations, a fact sheet on the action, and a related email that collectively detailed the scope of the rule and its anticipated impact. While the text of the chief of staff’s original email to Goffman included the word “coating” only once, the attached materials for Goffman’s review and approval included several references to “paint.”

The attached rulemaking materials discussed the expected financial impact of the rulemaking on industry. Specifically, these materials discussed that the emissions standards that the MCM Final Rule sought to codify were already in place and therefore were not expected to lead to additional costs for industry. However, the Final Rule attachment contained “cost impacts” and “economic impacts” sections that noted that MCM facilities were expected to each incur approximately \$6,700 in annual costs. The chief of staff did not recall performing a conflicts-of-interest screen on this email and package

²⁸ As described later in this chapter, Goffman discovered and self-reported this action to OGC Ethics and the OIG. *See* discussion *infra* at “Goffman’s Self-Disclosure.”

²⁹ The chief of staff described that the OMB initially deemed the rulemaking significant but that the Office of Policy was working with the OMB to move the action to a nonsignificant determination. As established through our documentary review and investigation testimony, Goffman’s first participation in the MCM rulemaking’s significance determination was his January 20, 2023 review and concurrence. Accordingly, Goffman did not participate in the Agency’s initial significance consideration or efforts with the OMB to move the rulemaking from significant to nonsignificant.

of materials. She testified that she “likely rested on the fact that we didn’t have an issue or didn’t perceive an issue on the” MCM Proposed Rule.³⁰

Within the same hour that the January 20, 2023 email was sent, Goffman replied to all recipients that he “concurred” with moving the package of materials to the Office of Policy to ask the OMB to make a nonsignificance determination.³¹ Goffman testified that “I have no memory at all of having done it” and “certainly” had “no memory at all” of seeing the words miscellaneous coatings manufacturing. He described that “I believe all I did was type the words, ‘I concur,’” and “did [so] on automatic pilot.” Goffman described the OMB significance determination as an area where he “totally defer[red] to others” as opposed to actively engaging and deciding between alternatives. [REDACTED], [REDACTED], and [REDACTED] who helped shepherd this stage of the MCM rulemaking testified that they did not recall Goffman participating in the OMB significance determination beyond his email concurrence on moving the package forward.

Goffman confirmed, however, that concurring with moving the materials to the OMB for a significance determination fell under an “enormous universe of actions” that could go forward only if he signed them. Goffman, the chief of staff, and [REDACTED] all testified that if the rulemaking required a significance determination and if Goffman had not concurred or the task was not assigned to another individual based on his recusal, the rulemaking would have ended there.

Goffman’s Self-Disclosure

On January 31, 2023, Goffman received the MCM Final Rule from his chief of staff for approval and signature. The email accompanying the rule referenced “Miscellaneous Coating Manufacturing” in the subject line. Goffman recalled opening that email and looking at the attachment file names but intentionally not opening them. Goffman recognized that “coatings” meant “paint,” and he recalled that he held a disqualifying level of Sherwin Williams stock. Goffman attributed his recognition that “coating” meant “paint” on that date to the fact that he recently referred to his financial disclosure filings to prepare for his Senate confirmation hearing. Goffman testified that he was not aware of the substance of the MCM rulemaking at that time. He also believed that this was the first time he had received an email or other communication related to MCM.

Immediately thereafter, Goffman asked the chief of staff to contact OGC Ethics to verify whether he should be recused from the MCM rulemaking. Goffman did this because his “understanding” was that, if he was “recused from something,” he needed “to treat it like a third rail,” to not “open the documents

³⁰ We are also aware that the chief of staff separately provided Goffman’s Recusal Statements to both the deputy assistant administrator and the assistant chief of staff. While neither had an assigned screening responsibility, the chief of staff’s purpose in providing them with Goffman’s Recusal Statements was to add additional screening protections. Nonetheless, these individuals also did not identify Goffman’s financial conflict-of-interest.

³¹ As described later in this chapter, Goffman discovered and self-reported this action to OGC Ethics and the OIG. See discussion *infra* at “Goffman’s Self-Disclosure.”

and start rooting around to make up your mind whether you're recused or not," and to metaphorically "step away from the keyboard" and "ask your ethics screener or OGC Ethics directly."

The next day, February 1, 2023, the chief of staff forwarded the email requesting Goffman's signature on the MCM rulemaking, along with the requested signature package, to an attorney in OGC Ethics. In her transmittal email, the chief of staff quoted more full excerpts from the rule and highlighted three quotations in yellow that included "paint," such as "[c]oatings are materials such as paints."

A few hours later, the OGC Ethics attorney responded to the chief of staff that "because of the level of Joe's holdings in Sherwin Williams, he's recused from working on this rulemaking." The chief of staff informed Goffman of OGC Ethics' determination that same day. Goffman testified that he no longer participated in the MCM rulemaking from that day on. Our investigation did not find any record of Goffman participating in the MCM rulemaking after February 1, 2023.³²

When the chief of staff informed Goffman of his recusal obligation, she also informed Goffman that on January 20, 2023, he concurred with moving forward with a nonsignificance determination on the MCM rulemaking and with sending materials to the OMB. *See* discussion *supra* at "Final Rule Stage 3: OMB Significance Determination." After receiving this information, Goffman contacted an attorney in OGC Ethics that same day, February 1, 2023, to seek counsel on addressing the issue. Goffman testified that the OGC Ethics attorney advised that either Goffman or OGC Ethics should report Goffman's January 2023 participation to the OIG. Goffman then contacted the inspector general to self-disclose his January 2023 participation in the MCM rulemaking.

Goffman testified that a few weeks later, on February 24, 2023, he realized that because the MCM Final Rule was a "Final Action," there was likely a Proposed Rule that preceded it. Goffman then searched his email inbox and identified the May 12, 2022 email containing the Action Memorandum for the MCM Proposed Rule that he signed and approved. *See* discussion *supra* at "Proposed Rule Stage 4: 'Requesting Signature' on the Action Memorandum." That same day, Goffman again contacted the OIG to self-disclose this additional instance of participation, which led to a February 24, 2023 interview with us regarding each of his self-disclosures.

Goffman testified that he had no independent recollection of his participation in the MCM rulemaking. Goffman also testified that he never intended to meet with a party or touch issues that affected a sector present on his Recusal Statements. Goffman said that what occurred with MCM was "very distressing" to both him and the chief of staff and that it was "rattling to both of us that there was a breach." The chief of staff described that Goffman was "dismayed" that the MCM rulemaking had "slipped through" and that he was "without hesitation ... ready to disclose the violation." Goffman testified that until that point, he "had a high degree of confidence" in the screening process. While recognizing that the responsibility was ultimately his, Goffman testified that much of what was discussed during his

³² On February 15, 2023, the assistant chief of staff emailed Goffman and others who signed the MCM Final Rule. Goffman quickly replied all to the communication, "I believe I am recused from this rulemaking. Please do not share anything with me about this."

testimony occurred because he believed that the OAR Immediate Office had a “regular and routine process in place” that he could “count on,” but he now recognized that “it’s underperformed.”

While recognizing that the responsibility was ultimately his, Goffman testified that much of what was discussed during his testimony occurred because he believed that the OAR Immediate Office had a “regular and routine process in place” that he could “count on,” but he now recognized that “it’s underperformed.”

Analysis

After considering Goffman’s participation throughout the MCM rulemaking, we determined that prior to January 31, 2023, Goffman failed to assess whether his financial interest in the paint industry posed a potential conflict-of-interest in the rulemaking and, as a result, did not refer the matter to another individual for a conflicts-of-interest screen and recuse himself pending the determination of that screen. We also found by a preponderance of the evidence that Goffman failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition by participating in the rulemaking.

Goffman Failed to Assess the Potential Conflict-of-Interest

As identified in his June 2021 Recusal Statement, Goffman held financial holdings in the paint and coatings manufacturer Sherwin Williams that required him to recuse from particular matters of general applicability that affected his interest. In two instances where he received materials notifying him that his financial interest in the paint industry was implicated in the rulemaking, Goffman failed to assess the potential conflict-of-interest, did not step away from the matter and refer it for a financial conflicts-of-interest screen, and instead participated in the MCM rulemaking.

Under the screening arrangement outlined in Goffman’s Recusal Statement, the chief of staff was enlisted to assist Goffman in assessing matters for potential financial conflicts-of-interest. The chief of staff aimed to identify and guard Goffman from participating in a matter involving a financial conflict-of-interest before the matter came to his attention. That said, the obligation to recuse “always remains the personal responsibility of the individual employee” with the financial conflict. U.S. Off. of Gov’t Ethics, DO-99-018 at 3. As an OAR assistant administrator who controls his own assignments, once he became aware that a matter involved his financial interest, it was Goffman’s responsibility to take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. 5 C.F.R. 2640.103(d)(1). As described by both the OGC Ethics director and Goffman himself, if a matter involving the approximately 60 specific parties or 20 sectors listed in his Recusal Statement was nonetheless sent to Goffman, he was to step away and direct that matter to the chief of staff or an ethics official, who would perform a conflicts-of-interest screen.

On May 12, 2022, Goffman was emailed the MCM Proposed Rule and an Action Memorandum for his review and signature. The email chain and attachment referenced the MCM rulemaking's relation to "paint" three times. The Action Memorandum contained two references to "paint," and the MCM Proposed Rule contained 11 references. The chief of staff could not recall performing a conflicts-of-interest screen on these materials. Goffman acknowledged that he read and signed the Action Memorandum but had no memory of assessing the rulemaking materials for potential conflicts-of-interest.

Similarly, on January 20, 2023, the chief of staff provided Goffman with materials for his review and concurrence relating to the OMB nonsignificance determination on the MCM rulemaking. The chief of staff's email to Goffman referenced the word "coating," and the attached materials included several references to "paint." Neither the chief of staff nor Goffman assessed the rulemaking materials for potential conflicts-of-interest.

While the chief of staff was required to perform conflicts-of-interest screens under Goffman's Recusal Statements, Goffman held the independent responsibility to ensure compliance with his ethical obligations. *Accord* U.S. Off. of Gov't Ethics, DO-99-018 at 3 (stating that "recusal ... remains the personal responsibility of the employee"). Accordingly, Goffman failed to assess the MCM rulemaking materials for a potential conflict-of-interest with his Sherwin Williams financial holdings prior to January 31, 2023.

Goffman Failed to Meet His Ethical Obligations Under the Federal Financial Conflicts-of-Interest Prohibition When He Participated in the MCM Rulemaking

We found, based on the preponderance of the evidence, that Goffman failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition by participating in the MCM rulemaking. As the principal deputy assistant administrator for the OAR from January 2021 until he was confirmed as the assistant administrator in January 2024, Goffman was a government employee for the full time period covered in our investigation. 5 C.F.R. §§ 2640.101, 102(b). We analyze the remaining three parts of the prohibition below.

Goffman Participated "Personally and Substantially" in His Official Capacity

Goffman participated personally and substantially in the MCM rulemaking when he signed the Action Memorandum on the MCM Proposed Rule and when he approved sending the MCM Final Rule to the OMB for a significance determination. While Goffman testified that he had no memory of either action, each action was "a single act of approving or participating in a critical step" of the rulemaking process and was therefore substantial. 5 C.F.R. § 2640.103(a)(2). Both actions were a part of the "enormous universe of actions" that could go forward only if Goffman signed them. In both instances, Goffman made a "decision" to concur with the recommendation of others. 5 C.F.R. § 2640.103(a)(2). We therefore found that Goffman personally and substantially participated in the MCM rulemaking. 5 C.F.R. § 2640.103(a)(2).

The MCM Rulemaking Was a Particular Matter of General Applicability

The MCM rulemaking was a particular matter of general applicability. A particular matter of general applicability is a “deliberation, decision, or action” that is focused on the interests of “a discrete and identifiable class of persons” as opposed to “consideration or adoption of broad policy options directed to the interests” of large groups. 5 C.F.R. § 2640.102(m); 5 C.F.R. § 2640.103(a)(1). An environmental regulation that requires expenditures by firms in a particular industry is a parallel example. *See* 2 Op. O.L.C 51, *supra*. Here, the MCM rulemaking involved deliberation on changes to the MCM emissions standards that impacted an identifiable class of persons—specifically, coatings or paint manufacturers. U.S. Off. of Gov’t Ethics, 06 x 8. Therefore, the MCM rulemaking was a particular matter of general applicability.

Goffman Had Knowledge of His Financial Interest in the Paint Industry, and the MCM Rulemaking Had a Direct and Predictable Effect on That Interest

For the full time period considered, Goffman owned or had imputed interests in Sherwin Williams above the regulatory threshold requiring a matters of general applicability recusal, which meant he held a disqualifying financial interest germane to the MCM rulemaking. 5 C.F.R. § 2640.103(b). In this circumstance, the company’s and Goffman’s financial interests are considered “as one and the same.” U.S. Off. of Gov’t Ethics, LA-20-03; *see also* 5 C.F.R. § 2640.103(b).

Despite Goffman’s testimony that he failed to associate that the MCM rulemaking concerned his financial interest in the paint industry when he acted, we found that there was sufficient evidence to establish the requisite knowledge.³³ First, Goffman was aware of his disqualifying financial interest in Sherwin Williams and of his obligation to recuse from matters of general applicability implicating that interest through his signed Recusal Statements. He also testified that he reviewed his active Recusal Statement at least “once or twice every couple of months.” The OGE also requires that shareholders are accountable for knowing their financial holdings. U.S. Off. of Gov’t Ethics, 93 x 37 at 2. Second, Goffman received materials that explicitly linked the MCM rulemaking to the paint and coatings industry. The Action Memorandum and MCM Proposed Rule contained multiple references and discussion of paint. Goffman acknowledged that he opened, reviewed, and signed the Action Memorandum. Goffman also concurred on moving the MCM Final Rule’s package of materials to the OMB. The email Goffman received attaching the package of materials referenced the word “coating”, which Goffman testified he knew meant “paint”.³⁴ Further, the package of materials included several references to paint, including references within the MCM Final Rule’s “cost section” that described the anticipated costs of the rulemaking to MCM facilities. While Goffman testified that he had no memory of either action, his signature and concurrence on documents that repeatedly referenced paint and coatings make it more likely than not that he knew the MCM rulemaking implicated the paint and coatings industry. As a result,

³³ We did not identify OGE guidance specifically examining whether the knowledge requirement of the federal conflicts-of-interest prohibition is satisfied when the employee received information that provided notice of the particular matter’s nexus to their financial interest. For our analysis, we examined whether it was more likely than not that Goffman knew that the paint sector was implicated in the rulemaking.

³⁴ According to Goffman, the same reference to “coating” in a separate rulemaking communication he received ten days later prompted him to question whether he had a potential conflict of interest and consult OGC Ethics.

we found sufficient evidence to establish that Goffman met the knowledge requirement under the federal financial conflicts-of-interest statute.

In terms of the rulemaking's effect, several MCM rulemaking materials noted that the paint and coatings industry had likely already adopted the rule's emissions standards and, as a result, that aspect of the rulemaking would not have a financial impact on stakeholders. Nonetheless, the text of the MCM Final Rule makes clear that under the rulemaking's reporting and technology requirements, each MCM facility was expected to incur \$6,700 in annual costs associated with reporting emissions levels and maintaining control device performance. The size of the financial effect is "immaterial" to a financial conflicts-of-interest analysis. 5 C.F.R. § 2640.103(a)(3). Consequently, the MCM rulemaking had an expected, and therefore a direct and predictable, effect on the paint and coatings industry, which Sherwin Williams is a part of.

Conclusion

We found, based on the preponderance of the evidence, that prior to January 31, 2023, Goffman failed to assess the MCM rulemaking for potential conflicts-of-interest with his financial holdings in Sherwin Williams and, as a result, did not refer the matter to another individual for a conflicts-of-interest screen and recuse from the matter pending the determination of that screen. We also found by a preponderance of the evidence that Goffman failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition when he participated in the MCM rulemaking while he held a disqualifying financial interest.

Chapter 2

Goffman's Participation in Preparations for the Bipartisan Infrastructure Law and Inflation Reduction Act Meeting with External Parties

In January and February 2023, Goffman participated in preparations for the “Bipartisan Infrastructure Law and Inflation Reduction Act Roundtable” held by the EPA on February 2, 2023.³⁵ Goffman did not participate in the roundtable itself. The roundtable’s purpose was to bring together senior EPA leaders and executives from financial sector entities. Because several of these sectors were named in Goffman’s June 30, 2021 Updated Recusal Statement, which was his active Recusal Statement when the roundtable preparations occurred, we investigated whether Goffman complied with ethical obligations to assess the roundtable preparations for potential financial conflicts-of-interest. The roundtable preparations included a planning meeting on January 23, 2023, and a pre-brief for the EPA administrator on January 25, 2023. We determined that Goffman failed to assess these preparations for potential conflicts. As a result, Goffman did not utilize his Recusal Statement’s screening arrangement, refer the matter to another individual for a conflicts-of-interest screen, and recuse himself from the matter pending the determination of that screen. We did not find that Goffman failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition when he participated in the roundtable preparations because the roundtable activities were not a particular matter.

Findings of Fact

Goffman's Financial Interest

In early 2023, Goffman owned or had an imputed financial interest of more than \$15,000 in Wells Fargo and J.P. Morgan. He also held a financial interest of either \$25,000 in one financial institution or \$50,000 of interests combined in several financial institutions. As a result, both Wells Fargo and J.P. Morgan, as well as the “Bank” and “Diversified Financials” sectors, were listed in Goffman’s Recusal Statement.³⁶ 5 C.F.R. § 2640.103; 5 C.F.R. § 2640.202(a) and(c). Goffman’s Recusal Statement also included the “Construction Machinery & Heavy Trucks” sector because of his financial ownership interest in Deere & Company.

The Global Industry Classification Standard definitions for the “Bank” and “Diversified Financials” sectors contain several industries and subindustries, including private equity firms, investment firms, and banks

³⁵ The parties and exhibits in this investigation referred to the Infrastructure Investment and Jobs Act as the “Bipartisan Infrastructure Law” or “BIL.” For that reason, we also refer to it as the Bipartisan Infrastructure Law in this report.

³⁶ As we discuss in Chapter 1, we know that Goffman was not granted a recusal waiver during his tenure in this administration during the relevant time period, and we did not encounter any information regarding other potential exemptions to the relevant conduct.

with private investment arms. See Appendix A.³⁷ Goffman testified that while the term “Diversified Financials” on his Recusal Statement was never explained to him by OGC Ethics or otherwise, he considered it to include “banks, hedge funds, [and] private equity firms.” Goffman also testified that each of the financial institutions listed in his Recusal Statement fell under that category, including Wells Fargo and J.P. Morgan, but that he did not associate the roundtable planning meeting and pre-brief as being related to those entities when they occurred. The Global Industry Classification Standard defines “Construction Machinery & Heavy Trucks” as “[m]anufacturers of heavy duty trucks, rolling machinery, earth-moving and construction equipment, and manufacturers of related parts.”³⁸ Because Goffman’s financial interest was based on his ownership interest in Deere & Company, his potential recusal obligation only applied to matters that affected off-road vehicles.

Goffman’s Participation

In early 2023, after the EPA received its supplemental appropriations, the Office of the Administrator’s Office of Public Engagement and Environmental Education, or OPEEE, began planning a February 2, 2023 roundtable with private financial sector participants and certain Agency officials to discuss “opportunities for public private partnership.” This roundtable was referred to as either the “Public Private Partnerships Roundtable” or the “Bipartisan Infrastructure Law and Inflation Reduction Act Roundtable.”³⁹ The Infrastructure Investment and Jobs Act, which is also referred to as the Bipartisan Infrastructure Law, provided approximately \$60 billion to the EPA to fund clean water and drinking water infrastructure projects, environmental cleanups, and electric school buses. The Inflation Reduction Act is a 2022 statute that distributed significant funding to several government agencies, including the EPA, to address clean energy and climate change.

In the weeks leading up to the roundtable, several emails and preparatory materials about the roundtable were exchanged among senior EPA leaders, including Goffman. During his second interview with us,⁴⁰ Goffman described being aware that the roundtable’s planned participants were “banks,” “investors,” “hedge funds,” and members of the “financial sector.”

Goffman described being aware that the roundtable’s planned participants were “banks,” “investors,” “hedge funds,” and members of the “financial sector.”

³⁷ As mentioned in Chapter 1 of this report, OGC Ethics uses the Global Industry Classification Standard to define sector recusals. See discussion *supra* at “Goffman’s Financial Interest.” As of March 2023, the “Diversified Financials” sector was renamed “Financial Services.”

³⁸ The Global Industry Classification Standard’s 2023 structure reclassified “Construction Machinery & Heavy Trucks” as the “Construction Machinery & Heavy Transportation Equipment” subindustry.

³⁹ Supporting documentation abbreviated the latter as “BIL/IRA Roundtable.”

⁴⁰ We conducted two interviews with Goffman during our investigation: one on February 24, 2023, and one on October 10, 2023.

Even so, and despite receiving multiple relevant emails and preparatory materials and attending the roundtable planning meeting and pre-brief, Goffman testified that he never associated that these roundtable preparations concerned his financial interests.

On January 20, 2023, Goffman was asked to review a Briefing Memorandum in preparation for the January 25, 2023 roundtable pre-brief for the EPA administrator. The chief of staff emailed the Briefing Memorandum to Goffman, noting that the pre-brief was to prepare for a roundtable with “the Equities Groups” and requesting input from Goffman and others in the OAR Immediate Office. The Briefing Memorandum described the pre-brief as an opportunity for the OPEEE, the Office of Water, the OAR, and other senior advisors to present their ideas and topline messaging for their roundtable presentations to the EPA administrator and confirm that the presentations aligned with his vision. In addition to outlining the intent of the pre-brief, the Briefing Memorandum contained the OAR’s talking points and discussion questions, which included references implicating banks, diversified financials, and heavy trucks. All three of these sectors appeared on Goffman’s Recusal Statement. The Briefing Memorandum also described the roundtable’s audience as “executives at larger private equity, investment firms, and banks with an investment arm.” The Briefing Memorandum noted that the entities in the audience were not eligible for EPA grant funds under its Bipartisan Infrastructure Law and Inflation Reduction Act programs, and an OAR discussion question asked how EPA grant funds could “motivate more private investment in transportation decarbonation.” The OAR talking points also included a reference to “the Clean Heavy Duty Vehicles program.”⁴¹

Goffman did not recall receiving this email or contributing to the Briefing Memorandum. The chief of staff also did not recall performing a conflicts-of-interest screen on these materials and stated that she “probably” did not, given the turnaround time frames. She testified that she did not “see any content” within the Briefing Memorandum that required a “flag.”⁴² We found no evidence that a conflicts-of-interest screen was performed by either Goffman or the chief of staff.

Later in the day on January 20, 2023, the OAR associate deputy assistant administrator for implementation emailed the same Briefing Memorandum to Goffman and others in the OAR Immediate Office. She referred to the February 2, 2023 roundtable as the “private equity roundtable.” Goffman did not recall performing a conflicts-of-interest screen on this email, and we did not find evidence of such a screen being performed. The chief of staff was not included on the email. On January 22, 2023, Goffman replied to the associate deputy assistant administrator for implementation, asking whether the Briefing Memorandum would provide details about funding provisions supporting hydrogen investment. Goffman did not recall reading the Briefing Memorandum or drafting any additional related materials. The chief of staff was not included on Goffman’s reply.

⁴¹ While Goffman’s recusal from the “Construction Machinery & Heavy Trucks” sector pertained only to matters relating to off-road vehicles, the Briefing Memorandum did not make this distinction.

⁴² This testimony was obtained during the chief of staff’s review of another version of the Briefing Memorandum that included the same descriptions of financial sectors and references to heavy duty trucks.

On January 23, 2023, Goffman attended the roundtable planning meeting to discuss the upcoming pre-brief for the EPA administrator.⁴³ Approximately ten minutes before the planning meeting began, the assistant chief of staff emailed Goffman, the chief of staff, and others in the OAR Immediate Office the same Briefing Memorandum that Goffman received on January 20, 2023. Goffman did not recall reviewing the January 23, 2023 email and its attachments, nor did he recall performing a conflicts-of-interest screen. The chief of staff testified that she did not recall whether she performed a conflicts-of-interest screen in connection with this email. We found no evidence that a conflicts-of-interest screen was performed.

On January 24, 2023, at around 5 p.m., the assistant chief of staff sent Goffman preparatory materials for the roundtable pre-brief for the EPA administrator, which was scheduled to take place on January 25, 2023. Those preparatory materials included an updated Briefing Memorandum that again identified private equity companies, investment firms, and banks with a financial arm as the roundtable's audience and that again referenced the Clean Heavy Duty Vehicles program. The chief of staff was copied on this email, but she could not recall whether she received it or whether she performed a conflicts-of-interest screen. We found no evidence that a conflicts-of-interest screen was performed.

That same evening, Goffman received another set of preparatory materials for the roundtable pre-brief for the EPA administrator. Those materials included a "Private Equity Invite List" attachment and a "Roundtable Company Bios" attachment, which listed participants from J.P. Morgan, Wells Fargo, several other banks, and other financial and investment institutions.⁴⁴ The preparatory materials also included the Briefing Memorandum. Goffman did not recall receiving this email, reviewing the attachments, or performing a conflicts-of-interest screen on these materials. The chief of staff was not copied on this email. Goffman did recall seeing a set of roundtable talking points that also included "pictures and bios" at some point, but he testified that he did not read the descriptions based on his lack of "financial sector" knowledge.

On January 25, 2023, Goffman attended the roundtable pre-brief for the EPA administrator. Goffman testified that he knew very little about the subject matter of the pre-brief beforehand but that he knew its purpose was to prepare for a roundtable with financial institutions and thought someone may have mentioned "private equity." Goffman recalled that the roundtable pre-brief was attended only by EPA staff and that the EPA administrator "extemporized on ... the importance of ... private sector investment in infrastructure as being necessary to really achieve" the necessary scale of significant change. Goffman

⁴³ Goffman had no independent recollection of attending the pre-brief, but after finding it on his calendar, he "inferred" during testimony that he did.

⁴⁴ As of January 24, 2023, the full list of potential organizations with employees in attendance included Apollo Global Management, Bank of America, Blackstone, Brookfield, EQT Corporation, JLC Infrastructure, KKR, Meridiam, Mindset Consulting, National Venture Capital Association, Subject Matter, Vision Ridge Partners, American Investment Council, Citigroup, Blackrock, Goldman Sachs, J.P. Morgan, Macquarie Group, National Association of Investment Companies, Revolution, TPG Capital, Ullico Inc., and Wells Fargo.

did not recall reviewing materials in connection with the roundtable pre-brief, and we did not identify evidence that Goffman performed a conflicts-of-interest screen prior to the pre-brief.

On January 27, 2023, an OPEEE public engagement specialist emailed the chief of staff, assistant chief of staff, and others a “set of probing questions” for the roundtable attendees, along with an RSVP list to provide “a sense of who will be in the room.”⁴⁵ Based on the evidence that we reviewed, this was the first time the chief of staff received a list of potential roundtable attendees. The RSVP list included Wells Fargo as an affirmative RSVP and J.P. Morgan as an invited-but-not-yet-confirmed participant, among other financial institutions. The “probing questions” again included “[h]ow can EPA grant funds for zero-emission vehicles and equipment motivate more private investments in transportation decarbonization.”

Later on January 27, 2023, the chief of staff forwarded the email from the OPEEE public engagement specialist to Goffman. The chief of staff’s email attached both the “probing questions” and the RSVP list. Her email described the roundtable as being with “Private Equity entities.” On January 29, 2023, the chief of staff specifically asked Goffman whether he had edits to the questions, and on January 30, 2023, he replied, “Nope. Thanks.”

On January 30, 2023, Goffman accepted the Outlook calendar invitation for the February 2, 2023 roundtable, which had the subject line of “IRA/BIL Public Private Partnership Roundtable.” That invitation did not include any content beyond the planned Agency participants and the subject line.

The Chief of Staff’s Conflicts-of-Interest Screen and Goffman’s Recusal

On February 1, 2023, and pursuant to a request by the chief of staff, the OPEEE public engagement specialist sent the chief of staff and assistant chief of staff a copy of the final Event Memorandum. Goffman was not included on this communication. The Event Memorandum included a full list of planned attendees, which included Wells Fargo but no other entity listed in Goffman’s Recusal Statement. The Event Memorandum noted that the roundtable sought to “highlight the historic investments in air and water” through the administration’s Greenhouse Gas Reduction Fund and how those investments can “be further leveraged with private capital.” The Event Memorandum’s “statement of purpose” included that the roundtable would host “private equity” and “investment space” leaders and maintained the OAR talking point reference to the Clean Heavy Duty Vehicles program.

The chief of staff forwarded the Event Memorandum to OGC Ethics and asked for a recusal determination.⁴⁶ In her email, the chief of staff noted that Wells Fargo was a listed participant and also

⁴⁵ The “probing questions” from the OAR were the same three questions contained in the Briefing Memorandums from the January 23, 2023 roundtable planning meeting and the January 25, 2023 roundtable pre-brief.

⁴⁶ The chief of staff testified that she recalled “struggling” to get a list of roundtable participants from the OPEEE and believed that she did not receive a list until she requested it from the OPEEE on February 1, 2023. Consequently, she said that she could not perform a conflicts-of-interest screen until that date. However, as noted above, the evidence showed that the chief of staff received a list of meeting participants on January 27, 2023, and that there was no record of her performing a conflicts-of-interest screen at that time.

appeared in Goffman's Recusal Statement.⁴⁷ She also described the roundtable as a discussion and not a decision-making meeting.

Within an hour, an attorney with OGC Ethics informed the chief of staff that Goffman should recuse himself from the roundtable. The attorney noted that Wells Fargo and the "heavy truck" sector were listed in Goffman's Recusal Statement. The chief of staff then emailed Goffman that he was recused from participating in the roundtable, and Goffman did not ultimately attend. Goffman testified that he never intended to meet with a party or touch issues that affected a sector present in his Recusal Statement. Goffman did not recall any discussions or preparatory materials that considered how private sector entities could benefit from Inflation Reduction Act or Bipartisan Infrastructure Law funds.

Analysis

On multiple occasions leading up to February 1, 2023, Goffman failed to assess the preparations for the "Bipartisan Infrastructure Law and Inflation Reduction Act Roundtable" for potential conflicts-of-interest with his financial holdings in several banking institutions and industries and, as a result, did not refer the matter to another individual for a conflicts-of-interest screen and recuse himself pending the determination of that screen. However, we did not find by a preponderance of the evidence that Goffman failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition when he participated in the roundtable preparations, as they were not a particular matter.

Goffman Failed to Assess for Potential Financial Conflicts-of-Interest

Goffman failed to assess for potential financial conflicts-of-interest on at least seven occasions between January 20, 2023, and February 1, 2023. As a result, he did not utilize his Recusal Statement's screening arrangement, refer the matter to another individual for a conflicts-of-interest screen prior to participation, and recuse himself from the matter pending the determination of that screen. Goffman's Recusal Statement included both "Banks" and "Diversified Financials," and private equity and investment firms are both included within the latter. It was Goffman's individual responsibility to avoid financial conflicts-of-interest, and as an employee that controlled his own assignments, once notified of a financial interest, he was obligated to "take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified." U.S. Off. of Gov't Ethics, DO-99-018; 5 C.F.R. 2640.103(d)(1).

The screening arrangement established in Goffman's Recusal Statement assigned the chief of staff to assist in identifying and screening Goffman from financial conflicts-of-interest and sought for the chief of staff to perform this function prior to Goffman facing the conflict. Goffman testified that when he was nonetheless faced with a potential financial conflict-of-interest, his practice was to step away from the matter and refer it to his chief of staff or an ethics official for an ethics determination. The OGC Ethics director's testimony confirmed that Goffman's practice aligned with his obligation to abide by the ethics

⁴⁷ When asked whether she considered any of Goffman's matters of general applicability sector recusals for the conflicts-of-interest screen, the chief of staff testified that she did not know.

rules. In each of the above-described instances, Goffman was faced with potential conflicts-of-interest, which may have required his recusal. Goffman did not flag these potential conflicts-of-interest for the chief of staff, and the chief of staff did not screen or seek a determination regarding Goffman's participation in the roundtable until February 1, 2023. Accordingly, Goffman failed to ensure that his participation in these activities were screened for his financial conflicts-of-interest.⁴⁸

These circumstances also showcase gaps in the chief of staff's screening procedures. As outlined in Chapter 1, the chief of staff testified that she implemented screening procedures for both internal and external stakeholder meeting requests before the meetings were added to Goffman's calendar. The chief of staff also described her practice of double-checking Goffman's calendar each morning to ensure that all events were properly screened for conflicts-of-interest. We did not identify evidence that the chief of staff followed these procedures or this practice in connection with the roundtable preparations. They were only partially followed in connection with the February 2, 2023 roundtable and, even then, were not performed until the day before the roundtable occurred. The chief of staff testified that the roundtable did not follow the OAR's typical screening process because it was not under the OAR's control.

Goffman Did Not Fail to Meet His Ethical Obligations Under the Federal Financial Conflicts-of-Interest Prohibition Because the Roundtable Activities Were Not a "Particular Matter"

We did not find that Goffman's participation in preparations for the "Bipartisan Infrastructure Law and Inflation Reduction Act Roundtable" was a "particular matter" under the federal financial conflicts-of-interest prohibition. As previously described, government employees cannot participate "personally and substantially" in their official capacity in any "particular matter" where they know that they have a "financial interest." 5 C.F.R. § 2635.402. "Particular matters" involve "deliberation, decision, or action" and "typically involve[] a specific proceeding affecting the legal rights of the parties" or a "transaction." 5 C.F.R. § 2640.102(l)-103(a)(1); *see also* U.S. Off. Of Gov't Ethics, DO-06-029 at 3-4, 8. While a particular matter can involve preliminary or informal discussions or can arise prior to final decision, those discussions need to consider concrete legal interests. Former Officers and Employees—Conflict of Interest (18 U.S.C. § 207)—Contract—Disqualification Connected With Former Duties or Official Responsibilities, 2 Op. O.L.C. 78-70 at 313, 315 (1978); U.S. Off. Of Gov't Ethics, 06 x 8.

The roundtable and related preparations did not involve deliberation or action concerning the legal rights of parties. Rather, it was touted as providing entities in the private sector with a broad overview of the EPA's new funding and the priorities of certain EPA offices. The Briefing Memorandum described the "purpose" of the roundtable as providing a better understanding of how to "catalyze the investments of the Biden-Harris Administration" and how to leverage additional investment with private capital. The

⁴⁸ Goffman's testimony surrounding these circumstances also acknowledged a fundamental misunderstanding of the matters of general applicability sector recusal obligations. When asked what sectors he considered in reviewing materials for potential financial conflicts-of-interest, Goffman testified that in general he "operated with" the "fallacy" that if enough other individual entities were present, that "dilut[ed]" and permitted participation with an entity that he may have a financial interest in. That said, Goffman's violations in this context did not result from this misinterpretation of the law. Goffman's issues stemmed from his failure to assess for potential conflicts-of-interest altogether.

private entities attending were not eligible for EPA grants under the Agency's programs funded by the Bipartisan Infrastructure Law or Inflation Reduction Act. Similarly, the communications, planning meeting, and pre-brief that Goffman participated in to prepare for the roundtable did not reference discussions on potential action items or decisions concerning concrete legal interests involving the entities he was recused from.

Accordingly, the "Bipartisan Infrastructure Law and Inflation Reduction Act Roundtable" and related preparations were not a particular matter. As this is a required part for a potential violation of the federal financial conflicts-of-interest prohibition, we did not evaluate the other parts and found no violation.

Conclusion

We found that Goffman failed to assess the roundtable preparations for potential financial conflicts-of-interest with his financial holdings in Wells Fargo, J.P. Morgan, other financial institutions, and Deere & Company. We did not find by a preponderance of the evidence that Goffman failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition when he participated in preparations for the "Bipartisan Infrastructure Law and Inflation Reduction Act Roundtable" because it was not a particular matter.

Chapter 3

Goffman's Participation Involving [REDACTED]

From the beginning of his current EPA tenure through the time period covered by our investigation, Goffman held financial interests in [REDACTED] that disqualified him from “participating personally and substantially” in “specific party” particular matters that involved his financial interest in [REDACTED]. During our investigation, we identified Goffman’s presence in communications that involved a request from [REDACTED] to increase its allocation of HFC allowances. As a result, we investigated the extent of his participation in the request. We found that Goffman failed to assess [REDACTED] request for potential conflicts-of-interest and did not utilize his Recusal Statement’s screening arrangement, refer the matter to another individual for a financial conflicts-of-interest screen, and recuse himself from the matter pending the determination of that screen. Our investigation was inconclusive as to whether Goffman’s participation involving the [REDACTED] matter was significant enough to constitute a failure to meet his ethical obligations under the federal financial conflicts-of-interest prohibition.

Findings of Fact

This section first provides an overview of a relevant rulemaking and Goffman’s financial conflicts-of-interest. It then outlines Goffman’s participation in the [REDACTED] HFC allowance allocation request.

The Relevant Rulemaking and Surrounding Context

The American Innovation and Manufacturing Act of 2020 directed the EPA to phase down nationwide production and consumption of HFCs, which are greenhouse gases commonly used in refrigeration, air conditioning, building insulation, fire extinguishing systems, aerosols, and other applications. The Act required the EPA to implement the phasedown through an allowance allocation and trading program, which established HFC production and consumption baselines that were predicated on national averages of annual HFC use from 2011 through 2013 and percentages of HFC use in 1989.⁴⁹ Allowances are permissions that the EPA grants to entities to produce, import, or consume a certain level of HFCs within a given year. Entities can expend, but not exceed, their granted annual allowances.

[REDACTED] is a producer and consumer of HFCs. According to its website, [REDACTED] is an international [REDACTED] company” that produces [REDACTED]. Among its products are [REDACTED], which use HFC [REDACTED]. Under EPA regulations, [REDACTED] was allocated a set amount of HFC production and

⁴⁹ The American Innovation and Manufacturing Act specified that “the production and consumption baselines are equal to the sum of (1) the average annual quantity of all HFCs regulated under the Act that were produced or consumed, respectively, in the United States during the period beginning on January 1, 2011 and ending on December 31, 2013; (2) the quantity equal to the sum of 15 percent of the production or consumption, respectively, of hydrochlorofluorocarbons (HCFCs) in calendar year 1989; and (3) 0.42 percent of the production or consumption, respectively, of chlorofluorocarbons (CFCs) in calendar year 1989.”

consumption allowances in 2022 and 2024 for [REDACTED]. In 2023, [REDACTED] was allocated only HFC consumption allowances.

In late 2022, Goffman was included on communications regarding whether [REDACTED] should receive HFC allowances in 2023. During this time period, however, Goffman held over \$15,000 worth of financial interests in [REDACTED] and was required to recuse from any particular matter involving [REDACTED]. 5 C.F.R. § 2640.103; 5 C.F.R. § 2640.202(a).

Goffman's Participation in [REDACTED] HFC Allocation Request

The American Innovation and Manufacturing Act directed the EPA to set annual HFC production and consumption allowances by October 1 of the preceding year. After the EPA issued the Notice of Data Availability on February 11, 2021, the Agency issued the 2022 HFC allowance allocations on October 7, 2021. For 2022, [REDACTED] received HFC allowances for [REDACTED]. The EPA issued the 2023 HFC allowance allocations on October 11, 2022, which granted [REDACTED] consumption, but not production, allowances for [REDACTED].

On October 20, 2022, [REDACTED] requested that the EPA also grant the company additional HFC allowances for 2023. In its request, [REDACTED] noted that another [REDACTED] manufacturer planned to stop producing [REDACTED] and that [REDACTED] therefore needed additional allowance allocations to cover the anticipated [REDACTED] shortfall. The [REDACTED] HFC allowance allocation request was directed to staff in the OAR's Office of Atmospheric Protection's Stratospheric Protection Division, not directly to Goffman. The [REDACTED] described [REDACTED] and [REDACTED] as being the OAR points of contact for discussions related to [REDACTED] request.

On November 4, 2022, Goffman received an email from the Office of Atmospheric Protection director with the subject line "[REDACTED] HFC Allowance Issue."⁵⁰ The chief of staff was not copied. In the email, the director provided background on [REDACTED] request and the preliminary steps taken by the Office of Atmospheric Protection.⁵¹ The director's email did not ask Goffman to make any determination on the [REDACTED] HFC allowance allocation request. On November 15, 2022, a special assistant in the OAR Immediate Office forwarded the November 4, 2022 email to two staff in the Stratospheric Protection Division, with a copy to the chief of staff. We found no evidence that Goffman or the chief of staff performed a conflicts-of-interest screen on either email exchange.⁵²

⁵⁰ Our reviews of emails and post-interview documents did not identify that Goffman participated in any specific party matters involving [REDACTED] from February 1, 2021, through November 4, 2022.

⁵¹ The Office of Atmospheric Protection director also referenced in his email that the [REDACTED] HFC allowance allocation request had been highlighted in the Office of the Administrators' Office of Congressional and Intergovernmental Relations' biweekly meeting, which Goffman had attended earlier that day. We were unable to corroborate this statement.

⁵² The chief of staff testified that she provided Goffman's Recusal Statement to the Office of Atmospheric Protection director prior to these November emails. We did not find any evidence that the director identified Goffman's potential conflicts-of-interest with the [REDACTED] matter. As discussed in Chapter 1 of this report, the chief of staff testified that she distributed Goffman's Recusal Statements to other individuals within the OAR, including the deputy assistant administrator, so that they could identify potential conflicts. See discussion *supra* at Chapter 1, "Financial Conflicts-of-Interest and Recusal Statements."

On November 18, 2022, the deputy assistant administrator submitted a request via email to schedule a meeting for Goffman and others to attend about the American Innovation and Manufacturing Act and the [REDACTED]. The meeting request was sent to an "OAR Scheduling" email address; Goffman did not receive the request. That same day, a staff assistant in the OAR Immediate Office sent an invitation on behalf of Goffman, who was listed as the meeting organizer, for a November 23, 2022 Microsoft Teams meeting to the deputy assistant administrator, the Office of Atmospheric Protection director, and others. As shown in the below image, the meeting invitation had a subject line of "General Discussion re: AIM Act and [REDACTED]." While the OAR chief of staff was not copied on the original meeting request, she did send a calendar update to the meeting event to all participants on November 21, 2022.

General Discussion re: AIM Act and [REDACTED]

Where:	Microsoft Teams Meeting
When:	Wed Nov 23 12:00:00 2022 -05:00
Until:	Wed Nov 23 12:30:00 2022 -05:00
Organisers	"Goffman, Joseph" <goffman.joseph@epa.gov>
Required Attendees:	[REDACTED]@epa.gov> [REDACTED]@epa.gov> [REDACTED]@epa.gov> [REDACTED]@epa.gov>
Optional Attendees:	[REDACTED]@epa.gov>

Microsoft Teams meeting records showed that Goffman dialed into the November 23, 2022 meeting for approximately 25 minutes.⁵³ Testimony and notes from the [REDACTED] confirmed that the [REDACTED] HFC allowance allocation request was discussed. When asked to describe Goffman's participation in the meeting, [REDACTED] noted that [REDACTED] did not have a detailed recollection of Goffman's participation but recalled generally that Goffman asked clarifying questions about the [REDACTED] HFC allowance allocation request. The [REDACTED] notes from that meeting included several potential "solutions" for [REDACTED] request but did not include any decision or content specific to Goffman's contributions. The [REDACTED] testified that Goffman "listened and asked a limited number of questions," providing "what additional questions do you (staff) have" as an example of a question posed by Goffman. [REDACTED] also noted that "[t]his was not a decisional meeting as we were early on in our assessment of the concern that [REDACTED] had raised."

From December 17 through 21, 2022, Goffman was copied on an email exchange between the deputy assistant administrator and five other OAR employees that discussed the [REDACTED] HFC allowance allocation request and the surrounding circumstances. The chief of staff was not copied on these emails. The emails detailed a meeting between career OAR staff and [REDACTED] regarding the status of [REDACTED] request; the

⁵³ Goffman testified that he did not think he attended the meeting. However, in addition to the Microsoft Teams meeting records showing that he dialed into the meeting, [REDACTED] other participants testified that they recalled Goffman's attendance.

steps [REDACTED] had taken, as well as other strategies [REDACTED] was considering, to lessen its anticipated HFC allowance shortage, including potentially purchasing allowances from other companies; the OAR staff's perspective on the request; the OAR staff's input provided to [REDACTED], and the next steps to evaluate the issue.⁵⁴ Goffman did not recall these emails. Our email review did not identify evidence that Goffman contributed to this email string.

Ultimately, the EPA did not issue any additional HFC allowances to [REDACTED] for 2023. According to [REDACTED], [REDACTED] used other available mechanisms to obtain the HFC allowances it needed. OAR staff never recommended whether to allocate additional HFC allowances to [REDACTED], and the [REDACTED] HFC allowance allocation request was resolved without the need for a formal decision.

In his testimony, Goffman did not specifically recall the above emails or any conversations, decisions, or other related actions regarding [REDACTED]. Goffman recalled the issue with [REDACTED] but thought that the conversations focused "on the more general proposition" of whether "there was an adequate supply of marketable allowances" that a "company could have access to" rather than a specific HFC allowance allocation request for a specific company. He did not recall that [REDACTED] was the party involved or that he ever made a decision on the [REDACTED] HFC allowance allocation request. He testified that as an "operating principle," he avoids getting involved in issues that involve a specific company seeking a certain outcome or relief. Goffman reasoned that those issues need to be handled by career EPA staff, as they relate to the integrity of EPA "processes," "methodology," and "decision-making" and that "political should stay out." Goffman testified that he was "shocked" that the [REDACTED] communications made it to him, given his financial interest in [REDACTED].

Goffman testified that he was "shocked" that the [REDACTED] communications made it to him, given his financial interest in [REDACTED].

In response to written questions that we submitted to Goffman after his initial testimony, Goffman recalled discussions with EPA career staff regarding congressional concerns about the shortage of [REDACTED] in the context of another manufacturer withdrawing from the market. He recalled that the HFC allowance allocation request centered on "providing assurance" that [REDACTED] "would continue to be available." Goffman wrote that he did not recall whether he was ever asked if [REDACTED] should be awarded additional HFC allowances or whether he provided an opinion.

Testimony from [REDACTED] involved in the [REDACTED] HFC allowance allocation request confirmed that Goffman was made aware of the request but had little-to-no participation in addressing it. [REDACTED] believed Goffman was generally aware of [REDACTED] request based on the November 4, 2022 email exchange described earlier in this chapter. [REDACTED] did not recall Goffman

⁵⁴ On December 21, 2022, the director of the Stratospheric Protection Division emailed that the other [REDACTED] manufacturer that [REDACTED] expected to exit the market, which gave rise to the [REDACTED] HFC allowance allocation request, confirmed that it planned to continue to supply [REDACTED] at its prior level.

ever being asked or providing an opinion on whether [REDACTED] should receive additional HFC allowances or “any decision on [REDACTED] request for additional allowances being put before Mr. Goffman.” [REDACTED] testified that the “best [REDACTED] can recall” of Goffman’s involvement was a few informal internal EPA briefings on the staff’s analysis of and conversations with [REDACTED] on whether additional HFC allowances should be granted.

Analysis

We found that Goffman failed to assess the [REDACTED] HFC allowance allocation request for potential financial conflicts-of-interest, refer it to another individual for a conflicts-of-interest screen, and recuse himself from the matter pending the determination of that screen. However, our investigation into whether Goffman failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition was inconclusive, as we were unable to determine whether Goffman’s participation was substantial.

Goffman Failed to Assess For Potential Financial Conflicts-of-Interest

Goffman failed to assess the [REDACTED] HFC allowance allocation request that was discussed in a November 23, 2022 meeting that he attended and in over a dozen individual communications that he received in November and December 2022. “[REDACTED]” was a specific entity identified in Goffman’s Recusal Statement. As a result, Goffman did not utilize his Recusal Statement’s screening procedure, refer the matter to another individual for a financial conflicts-of-interest screen, and recuse himself from the matter pending the determination of that screen.

RECUSAL LIST – SPECIFIC PARTY MATTERS			
Abbot Laboratories	Abbvie	Accenture PLC	Agilent Technologies
Alphabet Inc	Altria Group	Amazon	American Express
Ameriprise Financial	Apple, Inc.	Arthur J Gallagher	AT&T
Becton Dickinson	Centene Corp	Charter Communications	Cisco Systems
Colgate Palmolive	Comcast	Costco	Danaher Corp
Deere & Co.	Discover Financial	Disney	Dollar Tree Inc
Facebook	Fidelity	First Rep Bank	Glaxo Smith Kline
IBM	Johnson & Johnson	JP Morgan Chase	Lab Co of America Holding
Markel Corp	Martin Marietta Materials Inc	Meditronic PLC	Merck & Co.
Mettler Toledo Intl	Microsoft	Mondelez International	Monster Beverage
Nestle S.A.	Nike	Novartis AG	Omnicom Group
PayPal	PepsiCo	Pfizer Inc.	Philip Morris
Proctor & Gamble Co.	PNC Financial	Roche Holding AG	SalesForce
Sherwin Williams	Spotify	Starbucks Corp	State Street
TJX	Truist Financial Corp	United Health Group	US Bancorp
Verizon Comm	Visa	Wells Fargo	Zoetis, Inc.

Source: Goffman Recusal Statement (June 30, 2021).

While his chief of staff was appointed as his screener, Goffman is ultimately responsible for avoiding financial conflicts-of-interest even when a screening arrangement is in place. U.S. Off. Of Gov't Ethics, DO-99-018 at 3. An employee who controls their own assignments and who becomes aware of the need to disqualify from participating in a particular matter based on a conflict-of-interest "should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified." 5 C.F.R. 2640.103(d)(1). Multiple sources corroborated that Goffman's intended screening arrangement, when he was faced with a potential financial conflict-of-interest, was to refer it to his screener or OGE Ethics for a conflicts-of-interest screen and to recuse himself from the matter pending the determination of that screen. Despite receiving extended email exchanges that explicitly referenced [REDACTED] and its HFC allowance allocation request and participating in a meeting discussing the [REDACTED] request, Goffman did not assess the matter for a potential financial conflicts-of-interest due to his financial holdings in [REDACTED]. As a result, Goffman did not refer the matter to another individual to perform a conflicts-of-interest screen prior to participating.

Notwithstanding, the screening procedures established by the chief of staff contemplated that she would review all correspondence sent to Goffman and conduct a daily screen of his calendar. Our investigation found that the majority of the [REDACTED]-related communications were not circulated to the chief of staff. However, for the two [REDACTED] communications that the chief of staff was privy to—the November 4, 2022 email with the subject line of "[REDACTED] HFC Allowance Issue" and the calendar event for the November 23, 2022 meeting—we found no evidence that she conducted a conflicts-of-interest screen. Additionally, at least two OAR staff who were included on these communications, the deputy assistant administrator and the Office of Atmospheric Protection director, had received Goffman's Recusal Statement before these communications occurred, but we found no evidence that they identified Goffman's potential conflicts-of-interest with [REDACTED] either.

We Were Unable to Determine Whether Goffman's Participation in the Matter Was Significant Enough to Implicate His Ethical Obligations Under the Federal Conflicts-of-Interest Prohibitions

Our investigation into whether Goffman failed to meet his ethical obligations under the federal financial conflicts-of-interest prohibition when he participated in a matter involving [REDACTED] was inconclusive, as we were unable to determine whether Goffman's participation in [REDACTED] HFC allocation request was substantial.

First, Goffman became the principal deputy assistant administrator of the OAR in January 2021 and remained in that position throughout the duration of these facts. Accordingly, he was an officer and employee of the executive branch of the U.S. Government for the covered time period.

Second, Goffman participated personally in the [REDACTED] HFC allowance allocation request. Under the federal ethics regulations, personal participation is any direct participation by the employee. 5 C.F.R. § 2635.402(b)(4). Goffman received emails and attended a meeting regarding the [REDACTED] HFC allowance allocation request, so he personally participated.

However, we were unable to determine whether Goffman's participation was substantial. Substantial participation requires that the employee's involvement be of "significance to the matter" and is something "beyond mere receipt and review of information." 5 C.F.R. § 2640.103(a)(2); U.S. Off. of Gov't Ethics, 92 x 25 at 4-5. For example, substantial participation may occur when an employee participates through "decision, approval, disapproval, recommendation, investigation, or the rendering of advice in a particular matter." 5 C.F.R. § 2640.103(a)(2). Premeeting or preparatory participation in a matter can qualify. U.S. Off. of Gov't Ethics, 92 x 25 at 4-5. OGE guidance has noted that requesting additional information, asking for interpretation or clarification of materials received on a matter, or providing opinions or other information to others on a matter during preparatory or premeeting stages could "approach substantial participation" if those actions are significant to the matter. U.S. Off. of Gov't Ethics, 92 x 25 at 3-5.

We were unable to determine the significance of Goffman's participation in the [REDACTED] HFC allowance allocation request. The facts establish that Goffman's participation went beyond the mere receipt of information because he attended the November 23, 2022 meeting where solutions to [REDACTED] request were at least discussed and he asked questions. However, meeting participants described Goffman's questions as "limited" or "clarifying," such as asking whether staff had any additional questions to raise during the meeting. We did not identify any further evidence of the specific content of Goffman's "limited" or "clarifying" questions. Additionally, the meeting participants testified that the meeting occurred in the EPA's early stages of assessing [REDACTED] request and that Goffman was not involved in any decision-making related to the request. Because the significance of Goffman's contributions during the meeting was unclear, we could not determine whether Goffman's participation in [REDACTED] allocation request was substantial.

Third, the [REDACTED] HFC allowance allocation request was a "particular matter" involving a specific party. Particular matters that involve the "interests of specific persons," or parties and typically involve targeted legal proceedings or transactions. 5 C.F.R. § 2640.102(m); 5 C.F.R. § 2640.103(a)(1). [REDACTED] HFC allowance allocation request related to [REDACTED] specific interest in additional allocations. Therefore, [REDACTED] HFC allowance allocation request was a particular matter.⁵⁵

Finally, we found that Goffman had knowledge of his financial interest in [REDACTED] and that the [REDACTED] HFC allowance allocation request had a direct and predictable effect on that interest. While Goffman testified that he did not specifically recall that any of his work regarding HFC allowances or [REDACTED] involved [REDACTED], we found that there was sufficient evidence to establish the requisite knowledge. First, [REDACTED] was listed in Goffman's signed Recusal Statement, which he testified that he repeatedly reviewed. OGE also holds shareholders like Goffman accountable for knowing their financial holdings. U.S. Off. of Gov't Ethics, 93 x 37 at 2. Second, Goffman received emails that explicitly referenced [REDACTED] in the subject line and discussed [REDACTED] request throughout the text. He also attended and asked questions during a meeting that considered [REDACTED] request and potential solutions. Given this

⁵⁵ Whether [REDACTED] should receive additional HFCs is a specific party matter and not a matter of general applicability, as it affects a specific party and not a "discrete and identifiable class of persons." 5 C.F.R. § 2640.103(a)(1).

evidence, we found it more likely than not that Goffman had knowledge that his financial interest in [REDACTED] was implicated in the [REDACTED] HFC allowance allocation request.

We also found a nexus between the [REDACTED] HFC allowance allocation request and a direct and predictable effect on [REDACTED] financial interest. A “direct” and “predictable” effect occurs when there is a “real”—as opposed to a “speculative”—possibility that a matter will affect a disqualifying financial interest. 5 C.F.R. § 2640.103(a)(3)(ii). Granting or denying this request would impact [REDACTED] ability to [REDACTED], impacting [REDACTED] business operations.⁵⁶ We accordingly found that a decision as to whether to award [REDACTED] additional HFC allowance allocations would have a direct and predictable effect on [REDACTED], and therefore Goffman’s, financial interests.

Conclusion

We determined that Goffman failed to assess the [REDACTED] HFC allowance allocation request for potential conflict-of-interest with his financial holdings in [REDACTED]. Our investigation was inconclusive as to whether Goffman’s participation in the [REDACTED] HFC allowance allocation request was substantial so as to implicate his ethical obligations under the federal financial conflicts-of-interest prohibition.

⁵⁶ The “magnitude” of this impact to [REDACTED] is “immaterial” to this analysis. 5 C.F.R. § 2640.103(a)(3)(ii).

Chapter 4

Goffman's Participation in the Commercial Sterilization Rulemaking

From early 2021 through June 2023, Goffman held financial interests that required him to recuse from particular matters involving Abbott Laboratories, Johnson & Johnson, and Medtronic. During the course of our investigation, we identified that Goffman was substantially involved in the Commercial Sterilization rulemaking, which had potential impacts for these entities. We found that up until April 2022, Goffman failed to assess the rulemaking for potential financial conflicts-of-interest based on his financial interest in these entities. As a result, he did not refer the matter to another individual for a financial conflicts-of-interest screen and recuse himself from the matter pending the determination of that screen. In April 2022, Goffman assessed the rulemaking for potential financial conflicts-of-interest and sought a determination from OGC Ethics. We found that OGC Ethics erroneously advised Goffman that he could participate in the rulemaking. This error was not identified until September 2023, after we had initiated our investigation. Given this, our investigative analysis focuses primarily on Goffman's participation in the rulemaking prior to receiving the April 2022 advice from OGC Ethics.⁵⁷

The Commercial Sterilization rulemaking proposed changes to ethylene oxide, or EtO, emissions standards for a discrete group of commercial sterilization facilities. We determined that through April 2022, the rulemaking had a direct and predictable effect on Goffman's financial interest in Medtronic. As a result, it is more likely than not that Goffman failed to meet his ethical obligations under the federal conflicts-of-interest prohibition when he participated in the rulemaking until that point. Ultimately, following OGC Ethics' advice in April 2022, Goffman continued to participate despite Abbott Laboratories, Johnson & Johnson, and Medtronic owning a combined 10 percent of the facilities directly impacted by the rulemaking.

Findings of Fact

This section first provides background on the Commercial Sterilization rulemaking and addresses Goffman's disqualifying financial interests. It then details the extent of Goffman's involvement in the Commercial Sterilization rulemaking prior to April 13, 2022; Goffman's subsequent participation in the rulemaking after he received OGC Ethics' advice on April 13, 2022; and OGC Ethics' September 2023 revision of its April 13, 2022 advice.

⁵⁷ Federal ethics regulations provide that an employee who relies in good faith upon the advice of an agency ethics official will be held harmless from administrative disciplinary action, so long as that employee made full disclosure of the relevant circumstances when seeking this advice. 5 C.F.R. § 2635.107(b). As will be detailed in this chapter, Goffman and his chief of staff did not seek ethics advice on his participation in the Commercial Sterilization rulemaking or disclose the relevant circumstances until April 13, 2022.

The Rulemaking

EtO is a colorless gas that can be used to sterilize items like medical equipment that cannot be sterilized using steam or radiation. The EPA estimates that commercial sterilization facilities use EtO to sterilize about 20 billion medical devices each year. EtO is listed as one of 188 hazardous air pollutants under the Clean Air Act and is known to cause cancer in people who are regularly exposed to it over long periods of time. The EPA has set EtO emissions standards for commercial sterilization facilities since 1994.

In 2016, the EPA released a risk estimate that “indicated that cancer risks from EtO were significantly higher than [previously] understood.” According to [REDACTED], the Agency subsequently engaged in extensive work to research EtO emissions and undertake a rulemaking to further reduce them. On April 13, 2023, the EPA issued a new Proposed Rule on EtO emissions standards for commercial sterilization facilities. The Commercial Sterilization Proposed Rule outlined new requirements for 86 commercial sterilization facilities and aimed to reduce their EtO emissions by approximately 80 percent.⁵⁸ The Proposed Rule’s Regulatory Impact Analysis found that 48 parent companies owned the relevant commercial sterilization facilities, including Abbott Laboratories, Johnson & Johnson, and Medtronic.⁵⁹ Abbott Laboratories, Johnson & Johnson, and Medtronic held a combined eight commercial sterilization facilities, amounting to ownership of approximately one-tenth of the affected population. The Proposed Rule acknowledged that “commercial sterilization facilities play a vital role in maintaining an adequate supply of medical devices.” The image below shows that the Proposed Rule identified six industries as being impacted by the rulemaking.

Table 3—NESHAP and Industrial Categories Affected by This Proposed Action

Industrial category	NESHAP	NAICS code ¹
Surgical and Medical Instrument Manufacturing	40 CFR part 63, subpart O (https://www.ecfr.gov/current/title-40/part-63/subpart-O)	339112
Surgical Appliance and Supplies Manufacturing	40 CFR part 63, subpart O (https://www.ecfr.gov/current/title-40/part-63/subpart-O)	339113
Pharmaceutical Preparation Manufacturing	40 CFR part 63, subpart O (https://www.ecfr.gov/current/title-40/part-63/subpart-O)	325412
Spice and Extract Manufacturing	40 CFR part 63, subpart O (https://www.ecfr.gov/current/title-40/part-63/subpart-O)	311942
Dried and Dehydrated Food Manufacturing	40 CFR part 63, subpart O (https://www.ecfr.gov/current/title-40/part-63/subpart-O)	311423
Packaging and Labeling Services	40 CFR part 63, subpart O (https://www.ecfr.gov/current/title-40/part-63/subpart-O)	561910

¹ North American Industry Classification System.

Source: Federal Register Proposed Rule re: Commercial Sterilization.

⁵⁸ The Commercial Sterilization Proposed Rule is one of several actions that the Agency has considered to address EtO-related health risks. See [here](#) at 2. The other actions do not implicate Goffman’s recusal obligations.

⁵⁹ While Becton Dickinson is present on Goffman’s initial and updated Recusal Statements and included in the Commercial Sterilization Proposed Rule’s Regulatory Impact Analysis as the parent company for five commercial sterilization facilities, Goffman divested below the regulatory threshold for that company on June 15, 2021.

The Commercial Sterilization Proposed Rule’s Regulatory Impact Analysis noted that the majority of the facilities impacted sterilized medical devices and medical equipment. It also acknowledged that some medical device or equipment manufacturers perform commercial EtO sterilization in-house.

The Regulatory Impact Analysis also noted that the Commercial Sterilization Proposed Rule may lead to sterilizers raising their costs and imposing “significant costs relative to sales for some owners of affected facilities.” As shown in the image below, the Proposed Rule anticipated an annual cost of more than \$68 million for commercial sterilization facilities to comply with these new requirements.

Requirement	Total capital investment	Total annualized capital costs	Total annual operation and maintenance costs	Total annual cost
Permanent total enclosure	\$65,798,622	\$6,577,542	\$430,729	\$7,008,271
Additional gas/solid reactors	133,890,631	13,384,341	18,991,555	32,375,896
Cycle revalidations	0	0	2,490,000	2,490,000
Monitoring and testing	19,925,046	2,936,022	8,232,973	11,168,996
Recordkeeping and reporting	0	0	8,618,124	¹ 15,166,922
Total	219,614,299	22,897,905	38,763,381	68,210,084

¹ This includes \$6,548,798 of one-time annual costs for reading the rule, developing record systems, and initial title V permitting.

Source: Federal Register Proposed Rule re: Commercial Sterilization.

Goffman’s Financial Interest

During the time period relevant to this investigation and since at least March 10, 2021, Goffman owned or held an imputed financial interest of over \$25,000 in Abbott Laboratories, Johnson & Johnson, and Medtronic, thus requiring his recusal from any particular matters of general applicability involving each company.⁶⁰ 5 C.F.R. § 2640.202(c). Based on his ownership in these and other companies, OGC Ethics used the Global Industry Classification Standards to classify these interests into sectors titled “healthcare equipment & services” and “pharmaceuticals, biotechnology, and life sciences” companies, which required his recusal from those sectors.⁶¹ See Appendix B. As previously discussed, OGC Ethics’ inclusion of a sector recusal list in Goffman’s Recusal Statements was to help him assess potential

⁶⁰ As we discuss in the “Introduction” of this report, ownership interests exceeding \$25,000 in any one entity, or exceeding \$50,000 in all affected entities within any one sector, require recusal. 5 C.F.R. § 2640.202(c).

⁶¹ As we discuss in Chapter 1, Goffman was not granted a recusal waiver during his tenure in this administration during the relevant time period, and we did not encounter any information regarding other potential exemptions to the relevant conduct.

financial conflicts in matters of general applicability, like rulemakings. This list was not an all-inclusive listing of every potential disqualifying interest that could arise. See discussion *supra* at “Financial Conflicts-of-Interest and Recusal Statements.”

Goffman’s Participation in the Commercial Sterilization Rulemaking

Goffman’s Participation Prior to April 13, 2022, in the Commercial Sterilization Rulemaking

Our investigation found that Goffman was highly involved with the Commercial Sterilization rulemaking from February 17, 2022, through April 13, 2022, which is when the chief of staff sought advice from OGC Ethics at Goffman’s request. See Appendix C. According to his own description, Goffman worked “extensively” on the Commercial Sterilization rulemaking.

According to his own description, Goffman worked “extensively” on the Commercial Sterilization rulemaking.

During an interview in late September 2023, [REDACTED] testified that Goffman was actively involved in the Commercial Sterilization rulemaking “until recently.” Goffman confirmed that he participated at each stage of the rulemaking until notified by OGC Ethics on September 17, 2023, that he should no longer participate. See discussion *infra* at “Goffman’s Participation After April 13, 2022, in the Commercial Sterilization Rulemaking and OGC Ethics’ September 2023 Determination.” [REDACTED] recalled Goffman being involved with “briefings about ... the nature of the problem and the sources” and “what a regulation may look like.” [REDACTED] also recalled Goffman participating in early “Options Selection” meetings, other briefings, and “steps needed to ... move the action forward for signature.” [REDACTED] described that Goffman both asked the action development workgroup questions and shared his point of view. While [REDACTED] could not recall a specific number of meetings, [REDACTED] described Goffman as playing a “leading role” in “kicking off the discussion and providing feedback.”

In response to our request for information after his interview, Goffman provided a typed “List of Meetings” that he participated in regarding commercial sterilization and EtO. As shown in Appendix C, that list included 33 meetings prior to the chief of staff’s April 13, 2022 request for advice from OGC Ethics. See Appendix C. Because of the volume and density of Goffman’s participation, we highlight the following instances as representative examples:

1. A March 2021 Information Collection Request.
2. October 2021 and January 2022 meetings with external entities: Advanced Medical Technologies Association, or Advamed, and Medtronic.
3. A community outreach and education campaign.
4. “Options Selection” Meetings for the Commercial Sterilization Proposed Rule.

1. Goffman's Participation in the March 2021 Information Collection Request

In early 2021, Goffman participated in an Information Collection Request that the EPA distributed to commercial sterilization facilities. Specifically, he reviewed and approved sending the request to the OMB for review.

In March 2021, the EPA initiated efforts to collect “sector wide data” to gain “a better understanding of all emissions, emissions sources, processes and control technologies in use at EtO sterilization facilities nationwide.” On March 26, 2021, the chief of staff sent an “Information Collection Effort for Ethylene Oxide Commercial Sterilization Facilities” draft questionnaire for Goffman’s signed approval to send to the OMB for “review and approval.” She copied the deputy assistant administrator on that request. This Information Collection Request sought to “broaden” the EtO “data collection efforts” to include commercial sterilization facilities that had not been included in a previous questionnaire circulated in December 2019. If the OMB approved the request, commercial sterilization facilities “not included in the initial questionnaire would be required to complete the questionnaire under the authority of” the Clean Air Act. The chief of staff’s email to Goffman attached the Information Collection Request Notice for OMB review and approval, a spreadsheet with facility-specific data, and a “Supporting Statement for Public Comment” on the Information Collection Request drafted by the OAR Sector Policies and Programs Division. The supporting statement explained the EPA’s information collection efforts at EtO sterilization facilities and noted that the industries of “surgical and medical instrument manufacturing,” “surgical appliance and supplies manufacturing,” and “pharmaceutical preparation manufacturing” were affected by the Information Collection Request. The spreadsheet of facility-specific data included a tab with the December 2019 “initial ICR [Information Collection Request] data summary,” which notably included reporting from seven Medtronic facilities. The image below shows reporting for three of those facilities in Columns V, W, and X.

A	B	V	W	X
Tab	Table Name	MedtronicNorth Haven, CT	MedtronicVillalba, PR	MedtronicMiami Lakes, FL
Facility Details	Table 1. Facility Information	12	12	11
Facility Details	Table 2. Parent Company Information	8	8	8
Facility Details	Table 3. Facility Documents	n/a	n/a	n/a
Facility Details	Table 4. Facility Buildings	1	2	1
Facility Details	Table 5. Facility-level Data	42	42	42
Facility Details	Table 6. Materials Sterilized with EtO	n/a (new in v5.5.1)	n/a (new in v5.5.1)	n/a (new in v5.5.1)
Facility Details	Table 7. Materials Sterilized with Non-EtO Techniques and Approaches	n/a (new in v5.5.1)	n/a (new in v5.5.1)	n/a (new in v5.5.1)
Room Area	Table 1. Characteristics of Room Areas	15	3	1
Room Area	Table 2. Natural Draft Openings (NDO)	0	0	1
Room Area	Table 3. Leak Checks of Components in EtO Service	11	3	0
Room Area	Table 4. Room Area Controls	15	3	1
EtO & EG Storage	C. EtO Drum and Container Storage	12	12	5
EtO & EG Storage	D. Ethylene Glycol (EG) Tanks	0	0	0
Sterilizer Chambers	Table 1. Summary for Sterilizer Chambers	1	1	1
Sterilizer Chambers	Table 2. Sterilizer Chamber Operation and Monitoring Characteristics	4	23	0

Partial image of EPA Information Collection Request Burden Estimate (March 26, 2021). (highlights in original).

Within the same minute that the chief of staff sent the email to Goffman, he replied and concurred. Without approval from Goffman or another individual acting in Goffman's capacity, the Information Collection Request would not have moved to the OMB for review or been published in the Federal Register.

Our email review did not identify evidence that the chief of staff performed a conflicts-of-interest screen on this communication. Goffman vaguely recalled this Information Collection Request and that it requested "emissions data," and he described his involvement as limited to reviewing materials and concurring on sending it to the OMB. He explained that this occurred early in his tenure while he was "drowning under a fire hydrant" with workload. When asked whether he performed a conflicts-of-interest screen of these materials, he testified that he wasn't "sure what the recusal regime ... looked like in March," noted that his initial Recusal Statement was signed in April of that year, and did not recall any communication with OGC Ethics about his participation in the Information Collection Request. That said, Goffman testified that he understood as a matter of law that he had recusal obligations before they were memorialized in a Recusal Statement.

2. Goffman's Participation in October 2021 and January 2022 Meetings with External Entities: AdvaMed and Medtronic

Our investigation identified two central meetings between Goffman and AdvaMed to discuss commercial sterilization and EtO in anticipation of the upcoming Commercial Sterilization rulemaking. According to its website, AdvaMed is a trade association that "acts as the common voice for companies producing medical devices, diagnostic products and digital health technologies." Its member companies notably include Abbott Laboratories, Johnson & Johnson, and Medtronic, which are all listed in Goffman's Recusal Statements due to his disqualifying financial holdings.

Goffman's first meeting with AdvaMed occurred in October 2021. A September 30, 2021 email from an AdvaMed principal to Goffman described the meeting's purpose as allowing AdvaMed and some of its member companies to meet with Goffman and other OAR staff "to talk about the agencies work around EtO for Commercial Sterilizers." Advamed was noted in the email as "a trade association that represents over 400 digital health, diagnostic and medical device companies, include[ing] some commercial sterilizers." The email mentioned that some commercial sterilizers would attend the meeting. On October 5, 2021, an OAR staff assistant emailed a calendar invitation for an October 14, 2021 meeting to Goffman, other OAR staff, a senior director from Medtronic, and individuals from AdvaMed and other private entities. The chief of staff was not included. The calendar invitation also attached an external meeting request form that said, "We expect to include 3-4 member company representatives and can provide those names once the meeting is set." On October 12, 2021, an AdvaMed principal emailed a list of meeting attendees to the OAR staff assistant and copied the chief of staff. That list included the senior director from Medtronic. Goffman was not on that communication, but as noted earlier in this paragraph, he did receive the calendar invitation for the meeting, which included the senior director from Medtronic as a participant.

The chief of staff did not recall the October 12, 2021 email during testimony, but after we gave her the opportunity to review the email, she acknowledged that she received it.⁶² The chief of staff testified that she did not recall screening for any specific entity attendee.⁶³ We did not identify any other evidence that the chief of staff performed a conflicts-of-interest screen of the October 14, 2021 meeting or related materials.

On October 14, 2021, Goffman and other Agency officials met with AdvaMed and “a couple of their members.” The chief of staff did not attend. Notably, a senior director from Medtronic attended. Goffman’s active Recusal Statement prohibited him from participating in particular matters involving Medtronic.

Goffman did not recall the October 14, 2021 meeting or what was discussed, but after reviewing the documentary record, he said he believed that he attended the meeting. Based on what he recalled from the surrounding context and his awareness of EtO in October 2021, Goffman deduced that the meeting was about “industry coming in and offering to be constructive partners ... in any regulation we eventually did” and briefing the Agency. He thought that “the meeting would have been an exchange of stated commitments to work constructively together” in anticipation of an upcoming rulemaking. Goffman did not know whether the chief of staff performed a conflicts-of-interest screen in connection with this meeting, but he thought that, based on office practice, the meeting would not have ended up on his calendar unless it was screened. Goffman did not recall whether he performed his own conflicts-of-interest screen of the October 14, 2021 meeting. Our review of relevant email inboxes and OGC Ethics records did not identify any materials demonstrating that Goffman performed a conflicts-of-interest screen.

Goffman’s second meeting with AdvaMed occurred on January 13, 2022, and included the EPA deputy administrator. In the week leading up to this meeting, Goffman both received and reviewed related briefing materials and participated in briefings for the EPA deputy administrator, which centered on the Commercial Sterilization rulemaking. The final briefing document for the January 13, 2022 meeting was a nine-page memorandum addressed from Goffman and outlined that the purpose of the meeting was to “introduce the Administration’s goals on ethylene oxide (EtO), [the] proposed rulemaking for commercial sterilizers, and pre-proposal outreach” and to listen to AdvaMed’s “views and priorities.” One suggested talking point noted that the EPA would be coordinating with federal agency partners to ensure the EPA meets “the dual goals of protecting communities ... from EtO emission while

⁶² When asked whether she performed a conflicts-of-interest screen of the October 14, 2021 meeting attendees or subject matter, the chief of staff testified that the subject matter was EtO and that while she could not recall the date, she knew that OGC Ethics determined that Goffman could participate in that subject matter. As detailed later in this chapter, our investigation determined that OGC Ethics did not provide advice on Goffman’s participation in the Commercial Sterilization rulemaking until April 13, 2022, approximately six months later. See discussion *infra* at “Goffman’s Participation After April 13, 2022 in the Commercial Sterilization Rulemaking and OGC Ethics’ September 2023 Determination.”

⁶³ Goffman’s Recusal Statements list “Meditronic PLC,” which OGC Ethics confirmed is a typographical error and should read “Medtronic PLC.” The chief of staff did not recall performing a conflicts-of-interest screen for Medtronic and believed that she would have thought “Medtronic” and the misspelled name were different companies. We did not identify evidence that the chief of staff performed a conflicts-of-interest screen for “Medtronic,” “Meditronic,” or any other specific entity attendee.

safeguarding the supply of vital sterilized medical devices.” It described AdvaMed as the “world’s largest medical technology association representing device, diagnostics and digital technology manufacturers.” Other meeting attendees included a company serving the “healthcare, pharmaceutical, and medical device industries” and a company marketing “innovative medical products and services to the healthcare industry.” The terms “medical device” and “healthcare” were referenced, respectively, six and five times in the memorandum, while “equipment,” “life sciences,” and “biotechnology” all appeared twice.⁶⁴ A draft of this memorandum was sent to Goffman and the chief of staff for review on January 11, 2022, and again on January 12, 2022. Goffman confirmed that he did not have any comments or feedback on it.

Goffman attended the January 13, 2022 meeting with AdvaMed and other medical equipment companies. He generally recalled an AdvaMed-hosted meeting where “a number of representatives of the industry” were present, but he did not recall which entities. He recalled that the entities laid out “four to five concerns,” with the biggest being the “compliance timeline.” None of the entities attending the meeting were specifically listed in Goffman’s Recusal Statements; however, all of them fell within the “healthcare equipment and services” sector that Goffman was recused from. Our review of relevant email inboxes and OGC Ethics records did not identify any materials demonstrating that either the chief of staff or Goffman performed a conflicts-of-interest screen on the January 13, 2022 meeting or related materials.

3. Goffman’s Participation in a Community Outreach and Education Campaign

Goffman testified that he engaged in a year-and-a-half long community outreach and education campaign regarding EtO risks in connection with the rollout of the Commercial Sterilization rulemaking. This campaign involved dozens of communities that were identified as having EtO emissions above a certain level, as well as other stakeholders. Goffman recalled participating in planning community outreach and education efforts throughout the campaign. Goffman testified that he did not have decision-making authority in the campaign’s rollout. He described that staff in the EPA administrator’s office took the lead on “public risk communication” and “did a lot of the heavy lifting and talking through” the information campaign’s content and structure.

Goffman testified that part of the purpose of the campaign was to calm industry anxieties about the effect of any rulemaking on commercial sterilization facilities. He explained that their anxiety stemmed from observing the impact of emissions issues and a resulting state regulation on a major commercial sterilization facility, which eventually caused that facility to go out of business. Goffman testified that industry had “acute stress” about the Final Rule’s rollout. He explained that industry stakeholders had expressed fears about employee retention and the viability of facility operations. As a result, Goffman testified that the campaign aimed to be “solution oriented” and not “alarm-raising.”

⁶⁴ Goffman’s active Recusal Statement noted that he was recused from the “healthcare equipment & services” and “pharmaceuticals, biotechnology, and life sciences” sectors.

The following are four examples that illustrate Goffman's participation in the rulemaking's community outreach and education campaign.⁶⁵ First, Goffman authorized an October 25, 2021 briefing memorandum for an October 27, 2021 deputy regional administrators' meeting to "discuss how and when to share information with communities and the public about the health risks associated with the air toxic ethylene oxide." Second, Goffman participated in a meeting with a bipartisan EtO caucus in December 2021, and he edited a briefing memorandum that was addressed to the EPA administrator for that meeting.⁶⁶ Third, Goffman was invited to present at, as well as helped brief the EPA deputy administrator to prepare for, a January 13, 2022 meeting with the Advamed chief executive officer and a January 19, 2022 regional administrator's meeting on the proposed Commercial Sterilization rulemaking. As part of the meeting preparations, Goffman reviewed a slide deck and authored a briefing memorandum for the EPA deputy administrator. Fourth, Goffman reviewed a March 4, 2022 "EPA EtO National Outreach Strategy" plan document ahead of "discussions about EPA's risk communication and outreach planning."

The three briefing memorandums mentioned in the first three examples stated, "Ethylene oxide (EtO) is an important chemical for the U.S. economy and public health" and "is used in the manufacturing of many common everyday products and it is used to sterilize about half of all medical devices that need to be sterilized (about 20 billion devices each year)." They also discussed EtO's impact on "the medical supply chain." The document mentioned in the fourth example included references to "medical devices," "medical products," "medical equipment," or the "medical supply chain" a combined seven times.

4. Goffman's Participation in "Options Selection" Meetings for the Commercial Sterilization Proposed Rule

Goffman participated in "Options Selection" meetings for the Commercial Sterilization Proposed Rule prior to his chief of staff seeking advice from OGC Ethics on April 13, 2022. As described in the "Introduction" of this report, an "Options Selection" meeting is a part of the Action Development Process and is where outstanding issues are discussed. It is also where the action development workgroup proposes possible options or recommendations to senior management to incorporate into the rulemaking. The lead decision-maker then either selects a final option for the rulemaking or narrows the list of potential options. On March 24, 2022, an OAR staff assistant sent Goffman, the chief of staff, and other OAR employees calendar invitations for two meetings: an April 7, 2022 "Pre-brief Option Selection EtO Commercial Sterilizers" meeting and an April 13, 2022 "Options Selection EtO Commercial Sterilizers" meeting. The calendar invitations listed Goffman as the organizer of each meeting.

On April 6, 2022, Goffman received the "final materials" for the next day's "Pre-brief Option Selection for EtO Commercial Sterilizers" meeting, which staff referred to as the "Goffman Briefing." A pre-brief document attached to the email included several descriptions of Medtronic facilities alongside data and

⁶⁵ A "List of Meetings" that Goffman provided to the OIG included several additional community-outreach- and education-related meetings that Goffman participated in. See Appendix C e.g. August 26, 2021; October 5, 2021; October 6, 2021; October 18, 2021, etc.

⁶⁶ No members of industry were present.

descriptions of other entities within the commercial sterilization industry. Goffman recalled attending an “Options Selection” pre-brief that lasted approximately an hour. He testified that he also reviewed the related pre-brief materials for approximately 30 minutes. Goffman described himself as a passive participant who digested material and did not ask many questions. Our investigation did not identify evidence that Goffman or the chief of staff performed a conflicts-of-interest screen of the April 7, 2022 meeting or related materials.

On April 12, 2022, Goffman and his chief of staff were copied on an email containing briefing materials for the “Option Selection EtO Commercial Sterilizers” meeting. The email, sent from a special assistant for the Office of Air Quality Planning and Standards, again contained pre-brief materials that provided descriptions of Medtronic facilities and other commercial sterilizer companies. This “Options Selection” meeting was scheduled for one hour on April 13, 2022, at 2 p.m. and was attended by the EPA deputy assistant administrator and Goffman. Goffman recalled the “Options Selection” meeting for the Commercial Sterilization rulemaking as one 45-minute meeting where he did not ask questions beyond seeking clarity or confirmation on what was shared. He recalled being presented with two options for the rulemaking, but documentation shows that there were three. In line with the EPA’s Action Development Process, Goffman testified that his responsibility as an assistant administrator during the “Options Selection” meeting was either to approve the action development workgroup’s recommendation or to, on rare occasions, instruct on necessary changes or additional considerations. In performing this responsibility for the Commercial Sterilization rulemaking, Goffman said he evaluated whether [REDACTED]

[REDACTED]. Goffman did not recall the specifics of the options that he was presented with in terms of emissions limits, reporting requirements, or compliance dates. However, the emails we reviewed during our investigation demonstrate that Goffman signed off on the rulemaking option chosen at “Options Selection” meeting and that he sought feedback from the EPA deputy administrator on that option.

Also on April 13, 2022, after he had been participating in the Commercial Sterilization rulemaking for over a year, Goffman requested the chief of staff to seek advice from OGC Ethics on whether his participation was permissible. On April 13, 2022, at 2:17 p.m., which was after the “Options Selection” meeting had started, the chief of staff wrote to two OGC Ethics employees:

Joe asked me to double check with you that he would not be recused from this rulemaking (briefing paper attached). He doesn’t think so, and I can’t see a reason why, but it never hurts to check. If you need a list of the affected facilities, please let me know.

The chief of staff’s email attached the “Options Selection” briefing memorandum that mentioned Medtronic and other healthcare equipment and life sciences companies. The chief of staff informed OGC Ethics that the rule “covers only commercial sterilization and fumigation operations.”

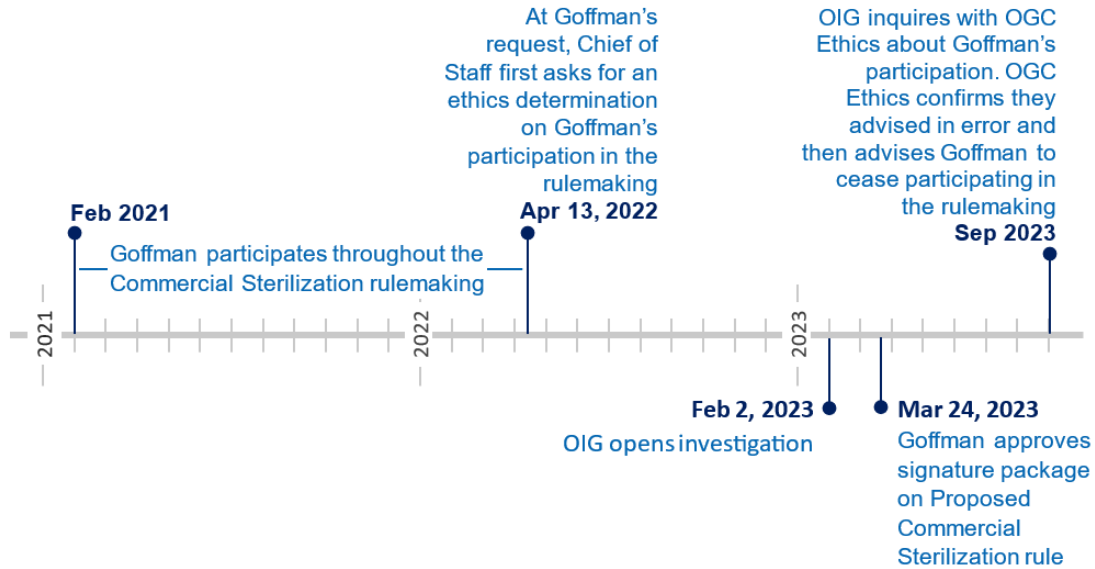
Neither Goffman nor the chief of staff recalled Goffman sending his request for OGC Ethics advice to the chief of staff or what prompted the request on that date. That said, Goffman speculated that his request may have been triggered when he reviewed his Senate Nominee Questionnaire, which he was required to complete after he was nominated for the assistant administrator position in March 2022 and which he signed and notarized on April 13, 2022. In a written response to our request for information, Goffman reasoned that because the questionnaire included “questions about conflicts of interest,” it may have led him to ask “whether ... [his ethics] agreement covered the commercial sterilizers rulemaking in light of the agreement’s reference to companies and sectors included in the agreement.”

Approximately an hour after the chief of staff emailed the two OGC Ethics employees, the OGC Ethics director asked a follow-up question about whether the rule affected the food and meat sector and then ultimately advised at 3:49 p.m. that “I agree that Joe may participate in this rule.” The director did not ask for “a list of affected facilities” before providing this advice. That same day, at 3:52 p.m., the chief of staff forwarded the approval to Goffman.

Goffman’s Participation After April 13, 2022, in the Commercial Sterilization Rulemaking and OGC Ethics’ September 2023 Determination

After OGC Ethics cleared his participation in the Commercial Sterilization rulemaking on April 13, 2022, Goffman participated in multiple rulemaking steps, meetings, and communications. A “List of Meetings” that Goffman provided to us in response to our request for information included 43 meetings that postdated the chief of staff’s April 13, 2022 request to OGC Ethics for advice. See Appendix C. Among those 44 meetings were meetings about the Final Rule’s early guidance, the community outreach and education campaign strategy, and the OMB’s review of the Final Rule; meetings with and internal briefings on behalf of external stakeholders; and meetings that involved the review and approval of the Commercial Sterilization Proposed Rule.

We also identified communications in which Goffman participated that were about the Commercial Sterilization rulemaking and that occurred after April 13, 2022. This included a March 24, 2023 email where Goffman was presented with and ultimately approved the signature package for the Proposed Commercial Sterilization Rule. This package contained a regulatory impact analysis which identified Abbott Laboratories, Johnson & Johnson, and Medtronic, all companies that Goffman held a financial interest in, as owning approximately ten percent of the commercial sterilization facilities affected by the proposed rule. Goffman continued to participate in the Commercial Sterilization rulemaking until the events depicted in the following image occurred in September 2023.



Source: EPA OIG image.

On September 12, 2023, after our investigation expanded to include the Commercial Sterilization rulemaking, we emailed OGC Ethics a request for information regarding Goffman's participation in that rulemaking. We asked whether OGC Ethics considered Goffman's recusal from Medtronic and the "health equipment & services" or "pharmaceutical, biotechnology, & life sciences" sectors before emailing its April 13, 2022 approval of Goffman's participation in the Commercial Sterilization rulemaking. On September 14, 2023, the OGC Ethics director replied that her review of Goffman's request was in error and that she needed to notify Goffman to cease and desist working on the rulemaking. On September 17, 2023, the OGC Ethics director provided additional detail regarding her April 2022 review:

I failed to personally consult Mr. Goffman's recusal statement to see that Medtronic and other sectors were referenced both on his statement and in the attached document that [the chief of staff] sent to me. ...

We have now undertaken a closer review of the briefing sheet and additional resources for this rulemaking (NESHAP for ethylene oxide sterilization and fumigation operations). We agree that Mr. Goffman should not have been cleared to participate in this rulemaking given his conflicting financial interests. Because I failed to provide correct advice to Mr. Goffman, I will correct that error going forward.

We agree that Mr. Goffman should not have been cleared to participate in this rulemaking given his conflicting financial interests. Because I failed to provide correct advice to Mr. Goffman, I will correct that error going forward.

—OGC Ethics director

Later that same day, the OGC Ethics director emailed Goffman detailing the error and informing him that he should “cease all involvement” in the Commercial Sterilization rulemaking. The OGC Ethics director noted that pursuant to 5 C.F.R. 2635.107, because Goffman “engaged in conduct in good faith reliance upon the advice of an ethics official,” he “will be held harmless from disciplinary action” if “he made full disclosure of all relevant circumstances” and that if the conduct violates a criminal statute, his reliance on ethics advice will be “a factor that may be taken into account.”⁶⁷

In explaining the source of her error, the OGC Ethics director testified that when she received the email from the chief of staff, she only reviewed the list of sectors on Goffman’s Recusal Statement because rulemakings are usually matters of general applicability. She was not familiar with the work of commercial sterilization facilities and only did “a quick search of commercial sterilization on Google just to get an idea about what they did.” The OGC Ethics director testified that, as a result, she did not associate the rulemaking with any specific parties listed on Goffman’s recusal statement and did not review the rule to see if it mentioned specific parties.

Goffman testified that receiving the September 17, 2023 notification from OGC Ethics that he could not participate in the rulemaking caused him great distress. Goffman emailed the then-acting chief of staff “within minutes” to be removed from any participation in the rulemaking.⁶⁸ The acting chief of staff informed Goffman that related work was being reassigned to the deputy assistant administrator.⁶⁹ Goffman testified that he has “absolutely not” had any involvement in the Commercial Sterilization rulemaking since September 17, 2023.

Goffman testified that he did not associate commercial sterilization with the “healthcare equipment & services” sector when he participated in the early stages of the rulemaking. Goffman testified that he now does. Goffman testified that his financial interests in Medtronic or any other company were “absolutely not” on his mind while working on the Commercial Sterilization rulemaking and that he was not aware the rulemaking implicated his financial interests. Like with the MCM rulemaking, Goffman described what occurred with the Commercial Sterilization rulemaking as “a breach in a system that I had come to rely on.” He described that “it was not only distressing emotionally, but I took it as a warning to do the thing I had hoped to avoid, which is being my own lawyer.” Goffman testified that beyond his April 13, 2022 request to the chief of staff, he did not recall if he ever sought ethics advice on whether he could participate in the Commercial Sterilization rulemaking. Our review of relevant emails and ethics

⁶⁷ As previously introduced, Goffman and his chief of staff did not seek ethics advice on his participation in the Commercial Sterilization rulemaking or disclose the relevant circumstances until April 13, 2022. As a result, Goffman is not held harmless under the federal ethics regulations for his participation prior to that date. See discussion *supra* at “Goffman’s Participation in the Commercial Sterilization Rulemaking Failed to Meet his Ethical Obligations Under the Federal Conflicts-of-Interest Statute.”

⁶⁸ In July 2023, the chief of staff began a detail outside of the OAR. The assistant chief of staff, who then became the acting chief of staff, became Goffman’s screener.

⁶⁹ On September 17, 2023, Goffman also asked the acting chief of staff to double-check with OGC Ethics that he was authorized to participate in a separate rulemaking that affected chemical manufacturers producing EtO and to ensure that commercial sterilization would not be discussed at a meeting the next day with the American Chemistry Council. He received clearance from OGC Ethics to participate in both the rulemaking and the meeting.

records did not identify additional evidence that Goffman referenced his Recusal Statements or otherwise sought to screen his participation in the Commercial Sterilization rulemaking.

Analysis

We found that for approximately two years, Goffman substantially participated in the Commercial Sterilization rulemaking that proposed changes to emissions standards for a discrete group of commercial sterilization facilities. Until April 2022, Goffman failed to assess the Commercial Sterilization rulemaking for potential conflicts-of-interest with his financial holdings in Medtronic and other entities falling into two sectors listed in his Recusal Statements.⁷⁰ As a result, he did not refer the matter to another individual for a financial conflicts-of-interest screen and recuse himself from the matter pending the determination of that screen. Approximately a year into his participation, Goffman initiated a conflicts-of-interest screen and sought and received erroneous ethics advice that he could participate in the rulemaking despite his conflicting financial interests. Goffman failed to meet his ethical obligations under the federal conflicts-of-interest prohibition through his participation in the Commercial Sterilization rulemaking prior to seeking OGC Ethics advice. Ultimately, although Goffman received clearance by OGC Ethics to participate, we determined that Goffman held disqualifying financial interests in three companies that owned approximately ten percent of the commercial sterilization facilities impacted by the rulemaking.

Goffman Failed to Assess for Potential Financial Conflicts-of-Interest

From February 2021 to April 2022, Goffman failed to assess the Commercial Sterilization rulemaking for potential conflicts-of-interest, despite receiving materials explicitly connecting Medtronic and other entities in the “health care equipment & services” and “pharmaceuticals, biotechnology, and life sciences” sectors with the rulemaking.⁷¹ As a result, he did not refer the matter to another individual for a financial conflicts-of-interest screen and recuse himself from the matter pending the determination of that screen.

While Goffman held the ultimate obligation to avoid his financial conflicts-of-interest, his screening arrangement assigned the chief of staff to assist him in assessing for potential conflicts-of-interest. U.S. Off. of Gov’t Ethics, DO-99-018 at 3. The screening arrangement anticipated that the chief of staff would screen matters before they reached Goffman, but Goffman understood that if he identified a potential conflict-of-interest, he was to step away from the matter and direct it to his chief of staff or OGC Ethics to perform a conflicts-of-interest screen.

⁷⁰ The Recusal Statement included a provision under particular matters of general applicability that provides “[i]f a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.” While Goffman’s disqualifying financial interests in the Commercial Sterilization rulemaking involved multiple sectors, we found no evidence that he relied upon this provision or similar OGC Ethics advice in determining whether to participate in the rulemaking.

⁷¹ Our investigation did not find evidence that Goffman received information specifically identifying Abbott Laboratories and Johnson & Johnson as owning impacted facilities prior to seeking OGC Ethics advice on April 13, 2022.

Goffman repeatedly failed to assess the Commercial Sterilization rulemaking for a potential conflict-of-interest with his financial holdings in Medtronic. Goffman received and reviewed the March 2021 Information Collection Request, which included a chart that explicitly referenced data from seven Medtronic facilities. In October 2021, Goffman attended a meeting related to EtO that included a senior director from Medtronic. Before that meeting, Goffman received a calendar invitation that listed the Medtronic senior director as an attendee. Finally, in April 2022, Goffman received pre-brief and briefing materials for his review in connection with the April 13, 2022 “Options Selection” meeting for the Commercial Sterilization rulemaking. Those materials included several descriptions of Medtronic facilities.

Goffman also failed to assess the Commercial Sterilization rulemaking for potential conflicts-of-interest with his financial holdings in entities falling into the “health care equipment & services” and the “pharmaceuticals, biotechnology, and life sciences” sectors listed in his Recusal Statement. Goffman received and reviewed multiple materials implicating that these sectors were impacted by the Commercial Sterilization rulemaking. For example, the supporting statement for the March 2021 Information Collection Request noted that the industries of “surgical and medical instrument manufacturing,” “surgical appliance and supplies manufacturing,” and “pharmaceutical preparation manufacturing” were affected. These industries fall within the “health care equipment & services” and “pharmaceuticals, biotechnology, and life sciences” sectors listed in Goffman’s Recusal Statement.⁷² Similarly, Goffman issued briefing materials in connection with a January 13, 2022 meeting with AdvaMed. These briefing materials used the following language to describe the three member companies that participated in the meeting: “medical device company,” “serves healthcare, pharmaceutical, and medical device industries,” and “develops, manufactures, and markets innovative medical products and services to the healthcare industry.” It also described AdvaMed as the “world’s largest medical technology association representing device, diagnostics and digital technology manufacturers.”

Our investigation did not identify that any conflicts-of-interest screen was performed on Goffman’s participation in the Commercial Sterilization rulemaking prior to his April 13, 2022 request to the chief of staff to seek advice from OGC Ethics. That request came over a year after Goffman began participating in rulemaking-related activities and after he participated in at least 30 rulemaking meetings and other related rulemaking activities implicating both his sector and Medtronic recusal obligations. As a result, Goffman did not utilize his Recusal Statement’s screening procedure, refer the matter to another individual for a financial conflicts-of-interest screen, and recuse himself from the matter pending the determination of that screen.

While Goffman is ultimately responsible for his recusal obligations, we note again that the screening practices that were supposed to be in place so that the chief of staff could preemptively identify potential

⁷² We note that Goffman’s Recusal Statement includes a statement that if a particular matter affected a combination of sectors, then he would not have a financial conflict-of-interest. We did not consider this statement relevant to our analysis, as we found no evidence that Goffman relied on this statement. Rather, he testified that he never associated medical devices with “healthcare equipment.” Additionally, this statement appears to be overbroad, as a discrete group or class involved in a particular matter of general applicability could potentially be classified into multiple sectors but still pose a potential financial conflict-of-interest.

conflicts-of-interest prior to Goffman's participation do not appear to have been followed. The chief of staff testified that her screening practice included reviewing all OAR meeting requests, regulations or rulemakings, correspondence, and Goffman's daily calendar when she was provided access to those communications and materials prior to his participation. However, our investigation did not identify evidence that the chief of staff performed these conflicts-of-interest screens in relation to the Commercial Sterilization rulemaking. For example and as described above, the chief of staff did not identify that Medtronic employees planned to and did attend an October 2021 meeting with Advamed that was on Goffman's calendar, nor did she identify that several briefing materials issued in Goffman's name repeatedly referenced keywords from his sector recusals.⁷³

Goffman Failed to Meet His Ethical Obligations Under the Federal Conflicts-of-Interest Prohibition When He Participated in the Commercial Sterilization Rulemaking

We found, based on the preponderance of the evidence, that Goffman's involvement in the Commercial Sterilization rulemaking was "personal and substantial" participation in a "particular matter" that had a direct and predictable effect on his financial interest in Medtronic. For the same reasons addressed in the other chapters of this report, we determined that Goffman was an officer and employee of the U.S. government, and we did not consider Goffman's intent.⁷⁴ We address each additional part of the federal financial conflicts-of-interest prohibition below.

Goffman Participated Personally and Substantially in the Commercial Sterilization Rulemaking

Goffman participated personally and substantially in the Commercial Sterilization rulemaking. Personal participation means direct participation. 5 C.F.R. § 2640.103(a)(2). Participation may be "substantial" even if it is not outcome determinative, and preparation may qualify. 5 C.F.R. § 2640.103(a)(2); U.S. Off. of Gov't Ethics, 92 x 25 at 4-5. Goffman's participation occurred prior to the Final Rule but nonetheless was significant and substantial.

In Goffman's own words, he participated "extensively" at each stage of the Commercial Sterilization rulemaking prior to his recusal, including attending at least 33 meetings related to the rulemaking. Appendix C. [REDACTED] described Goffman as an "active participant" in these meetings who often played "a leading role" in the discussions. Additionally, Goffman reviewed and provided outcome-determinative approval for the March 2021 Information Collection Request to send to the OMB for review prior to publication in the Federal Register. He also prepared for, attended, considered alternatives, and provided approval at the Commercial Sterilization Proposed Rule's April 13,

⁷³ As noted in previous chapters, several OAR staff who had received copies of Goffman's Recusal Statements and were included on the rulemaking communications to Goffman also did not identify the potential conflicts-of-interest with Medtronic or the "health care equipment & services" and "pharmaceuticals, biotechnology, and life sciences" sectors.

⁷⁴ As addressed in the "Analytic and Legal Framework" section of Chapter 1, an employee's motive or intent is not considered when assessing whether a violation of the prohibition has occurred. U.S. Off. of Gov't Ethics, 87 x 7. *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 560-561 (1961).

2022 “Options Selection” meeting, and he sought EPA deputy administrator feedback on the selected option.

Each of these examples demonstrate that Goffman’s participation was direct, went beyond “mere receipt and review of information,” and were significant to the rulemaking. Accordingly, we determined that Goffman participated personally and substantially in the Commercial Sterilization rulemaking.

The Commercial Sterilization Rulemaking Was a Particular Matter of General Applicability

The Commercial Sterilization rulemaking on EtO facility emissions was a particular matter of general applicability because it was focused on the interests of a discrete and identifiable class of persons, specifically commercial sterilizer facilities that emit EtO. A particular matter can include a rulemaking that changes agency standards related to a particular and distinct group or industry, as well as informal and preliminary discussions on such rulemakings. See U.S. Off. of Gov’t Ethics, 06 x 8. The Commercial Sterilization rulemaking aimed to reduce the EtO emissions of a defined set of commercial sterilization facilities. As described by the chief of staff in seeking a financial conflicts-of-interest review from OGC Ethics, the rule “covers only commercial sterilization and fumigation operations.” Therefore, the Commercial Sterilization rulemaking on EtO facility emissions, including Goffman’s meetings with AdvaMed and Medtronic to discuss the EPA’s potential change to EtO emissions standards, as well as his participation in the community outreach and education campaign about EtO, was a particular matter of general applicability.

Goffman Had Knowledge of His Financial Interests, and the Commercial Sterilization Rulemaking Had a Direct and Predictable Effect on Those Interests

We found that Goffman knew he held financial interests in Medtronic, a healthcare technology company with facilities that manufacture and sterilize medical devices, over the \$25,000 particular matter of general applicability recusal threshold. The company was specifically listed in Goffman’s signed Recusal Statement, and Goffman testified that he reviewed his Recusal Statement at least “once or twice every couple of months.” The company’s and Goffman’s financial interests are considered the same. U.S. Off. of Gov’t Ethics, LA-20-03. Additionally, as a shareholder, Goffman is held accountable for knowing his financial holdings. U.S. Off. of Gov’t Ethics, 93 x 37 at 2.

While Goffman testified that he did not initially associate that the Commercial Sterilization rulemaking involved his specific party or matter of general applicability sector recusals, there was considerable evidence that Goffman received information linking Medtronic to the rulemaking prior to his seeking advice from OGC Ethics in April 2022. Goffman received and concurred on a March 2021 Information Collection Request for the rulemaking that attached a spreadsheet that specifically included information on seven Medtronic facilities by name. In October 2021, Goffman received a request for a meeting with AdvaMed to discuss EtO in anticipation of the upcoming rulemaking with some of its member companies, including commercial sterilizers. Goffman granted this request, and a representative of Medtronic attended that meeting. Additionally, in April 2022, Goffman received and reviewed materials in connection with the Commercial Sterilization Proposed Rule’s “Options Selection”

meeting. These materials included specific descriptions of Medtronic’s commercial sterilization facilities. Goffman then approved the recommended option presented in the “Options Section” meeting.

Finally, while neither Goffman nor the chief of staff recalled what prompted Goffman’s request in April 2022 for a conflicts-of-interest screen, Goffman speculated that it was potentially triggered when he reviewed his Senate Nominee Questionnaire, which required him to revisit his financial conflicts-of-interest. Notably, we did not find evidence that Goffman asked for potential financial conflicts-of-interest screens on every other rulemaking or action that he participated in at the time. This suggested that Goffman connected his financial interests with the Commercial Sterilization rulemaking. In consideration of this evidence, we found it more likely than not that Goffman was aware of his financial interest in Medtronic and that it was implicated in the Commercial Sterilization rulemaking prior to his seeking advice from OGC Ethics in April 2022.

We also found that the Commercial Sterilization rulemaking had a direct and predictable effect on Goffman’s financial interests. Goffman’s own testimony acknowledged that commercial sterilization facilities were fearful of how a potential Commercial Sterilization rulemaking could impact their future ability to operate. As a result, Goffman testified that the community outreach and education campaign was designed to be “solution oriented” and not “alarm-raising.” This evidence demonstrated that the Commercial Sterilization rulemaking’s financial effect on Medtronic, a company who owned commercial sterilization facilities, was “real” and not “speculative.” We accordingly found a direct and predictable link between the Commercial Sterilization rulemaking and Goffman’s disqualifying financial holdings.

The direct and predictable effect of the Commercial Sterilization rulemaking on Goffman’s financial interest was further solidified in the Proposed Rule package that Goffman approved in March 2023, after OGC Ethics cleared him to participate. The Proposed Rule’s Regulatory Impact Analysis and Technical Support Document’s Industry Profile specifically identified Abbott Laboratories, Johnson & Johnson, and Medtronic as parent companies with commercial sterilization facilities that would be affected by the new requirements. The EPA estimated in the Commercial Sterilization Proposed Rule that impacted commercial sterilization facilities would incur a combined annual cost of over \$68 million.

Conclusion

We determined that prior to April 2022, Goffman failed to assess the Commercial Sterilization rulemaking for potential conflicts-of-interest with his financial holdings in Medtronic and other entities in the “health care equipment & services” and “pharmaceuticals, biotechnology, and life sciences” sectors. As a result, he did not refer the matter to another individual for a financial conflicts-of-interest screen and recuse himself pending the determination of that screen. We also found by a preponderance of the evidence that Goffman failed to meet his ethical obligations under the federal conflicts-of-interest prohibition when he participated in the Commercial Sterilization rulemaking while he held a disqualifying financial interest.

Global Industry Classification Standard Banks and Financial Services

Sector – 40 – Financials.

Industry Group – 4020 – Financial Services (new name – prior “Diversified Financial Services”).

Table A-1: Industry 402010, Financial Services (New Name)

Subindustry	Name	Description
40201020	Diversified Financial Services (New Name)	Providers of a diverse range of financial services, and/or with some interest in a wide range of financial services including banking, insurance and capital markets, but with no dominant business line. Excludes companies classified in the Regional Banks and Diversified Banks Sub-Industries.
40201030	Multi-Sector Holdings	A company with significantly diversified holdings across three or more sectors, none of which contributes a majority of profit and/or sales. Stakes held are predominantly of a non-controlling nature. Includes diversified financial companies where stakes held are of a controlling nature. Excludes other diversified companies classified in the Industrials Conglomerates Sub-Industry.
40201040	Specialized Finance	Providers of specialized financial services not classified elsewhere. Companies in this Sub-Industry derive a majority of revenue from one specialized line of business. Includes, but not limited to, commercial financing companies, central banks, leasing institutions, factoring services, and specialty boutiques. Excludes companies classified in the Financial Exchanges & Data Sub-Industry.
40201050	Commercial & Residential Mortgage Finance (New)	Financial companies providing commercial and residential mortgage financing and related mortgage services. This Sub-Industry includes non-deposit funded mortgage lending institutions, building societies, companies providing real estate financing products, loan servicing, mortgage broker services, and mortgage insurance.
40201060	Transaction & Payment Processing Services (New)	Providers of transaction & payment processing services and related payment services including digital/mobile payment processors, payment service providers & gateways, and digital wallet providers.

Table A-2: Industry 402020, Consumer Finance

Subindustry	Name	Description
40202010	Consumer Finance	Providers of consumer finance services, including personal credit, credit cards, lease financing, travel-related money services and pawn shops. Excludes mortgage lenders classified in the Commercial & Residential Mortgage Finance Sub-Industry.

Table A-3: Industry 402030, Capital Markets

Subindustry	Name	Description
40203010	Asset Management & Custody Banks	Financial institutions primarily engaged in investment management and/or related custody and securities fee-based services. Includes companies operating mutual funds, closed-end funds and unit investment trusts. Excludes banks and other financial institutions primarily involved in commercial lending, investment banking, brokerage and other specialized financial activities.
40203020	Investment Banking & Brokerage	Financial institutions primarily engaged in investment banking & brokerage services, including equity and debt underwriting, mergers and acquisitions, securities lending and advisory services. Excludes banks and other financial institutions primarily involved in commercial lending, asset management and specialized financial activities.
40203030	Diversified Capital Markets	Financial institutions primarily engaged in diversified capital markets activities, including a significant presence in at least two of the following area: large/major corporate lending, investment banking, brokerage and asset management. Excludes less diversified companies classified in the Asset Management & Custody Banks or Investment Banking & Brokerage Sub-Industries. Also excludes companies classified in the Banks or Insurance industry groups or the Consumer Finance Sub-Industry.
40203040	Financial Exchanges & Data	Financial exchanges for securities, commodities, derivatives and other financial instruments, and providers of financial decision support tools and products including ratings agencies.

Table A-4: Industry 402040, Mortgage Real Estate Investment Trusts (REITs)

Subindustry	Name	Description
40204010	Mortgage REITs	Companies or Trusts that service, originate, purchase and/or securitize residential and/or commercial mortgage loans. Includes trusts that invest in mortgage-backed securities and other mortgage related assets.

Global Industry Classification Standard Health Care Equipment & Services and Pharmaceuticals, Biotechnology & Life Sciences

Sector – 35 – Health Care

Industry Group – 3510 - Health Care Equipment & Services.

Table B-1: Industry 351010, Health Care Equipment & Supplies

Subindustry	Name	Description
35101010	Health Care Equipment	Manufacturers of health care equipment and devices. Includes medical instruments, drug delivery systems, cardiovascular & orthopedic devices, and diagnostic equipment.
35101020	Health Care Supplies	Manufacturers of health care supplies and medical products not classified elsewhere. Includes eye care products, hospital supplies, and safety needle & syringe devices.

Table B-2: Industry 351020, Health Care Providers & Services

Subindustry	Name	Description
35102010	Health Care Distributors	Distributors and wholesalers of health care products not classified elsewhere.
35102015	Health Care Services	Providers of patient health care services not classified elsewhere. Includes dialysis centers, lab testing services, and pharmacy management services. Also includes companies providing business support services to health care providers, such as clerical support services, collection agency services, staffing services and outsourced sales & marketing services.
35102020	Health Care Facilities	Owners and operators of health care facilities, including hospitals, nursing homes, rehabilitation centers and animal hospitals.
35102030	Managed Health Care	Owners and operators of Health Maintenance Organizations (HMOs) and other managed plans.

Table B-3: Industry 351030, Health Care Technology

Subindustry	Name	Description
35103010	Health Care Technology	Companies providing information technology services primarily to health care providers. Includes companies providing application, systems and/or data processing software, internet-based tools, and IT consulting services to doctors, hospitals or businesses operating primarily in the Health Care Sector.

Table B-4: Industry 352010, Biotechnology

Subindustry	Name	Description
35201010	Biotechnology	Companies primarily engaged in the research, development, manufacturing and/or marketing of products based on genetic analysis and genetic engineering. Includes companies specializing in protein-based therapeutics to treat human diseases. Excludes companies manufacturing products using biotechnology but without a health care application.

Table B-5: Industry 352020, Pharmaceuticals

Subindustry	Name	Description
35202010	Pharmaceuticals	Companies engaged in the research, development or production of pharmaceuticals. Includes veterinary drugs.

Table B-6: Industry 352030, Life Sciences Tools & Services

Subindustry	Name	Description
35203010	Life Sciences Tools & Services	Companies enabling the drug discovery, development and production continuum by providing analytical tools, instruments, consumables & supplies, clinical trial services and contract research services. Includes firms primarily servicing the pharmaceutical and biotechnology industries.

Appendix C

This document was drafted by Joseph Goffman and provided to us on October 15, 2023, in response to our request for a “list of the dates of each meeting, presentation, or briefing that you attended where” commercial sterilization was discussed.

EtO Questionnaire Response

Partial Response to Question 12 – EtO/Sterilizers: List of Meetings

Note: Additional assistance may be needed to retrieve materials associated with the meetings listed here and to recall details of these meetings.

February 17, 2021 – meeting with OAR staff for general introduction to topic

February 22, 2021 – meeting with OAR staff for general introduction (part 2)

February 23, 2021 – meeting with [REDACTED] of Van Ness Feldman, representing industry, for general discussion on EtO; discussion *may* have included presentation of concerns about 2016 IRIS value and “commitment to work with EPA.”

March 3, 2021 – meeting with OAR staff to be briefed on recent OIG reports on EtO.

April 2, 2021 – meeting with OAR staff and Avi Garbow on OIG EtO report/response.

April 6, 2021 – meeting with citizens group Stop Sterigenics for presentation on reducing EtO emissions.

April 9, 2021 – meeting with OAR staff, Avi Garbow, and OIG staff to discuss EPA response to OIG report.

April 13, 2021 – meeting with American Chemistry Council to hear presentation on industry approach to reducing EtO emissions; likely raised concerns about IRIS value.

April 19, 2021 – meeting with Inspector General O’Donnell on Revisions to the OIG Report

May 27, 2021 – meeting with OAR staff and Regions staff to discuss EPA response to OIG recommendations; likely discussed early plans for informing communities of risks associated with local EtO/commercial sterilizer facilities.

June 1, 2021 – meeting with OAR staff, Avi Garbow, and OIG staff to discuss EPA community notification plans.

June 24, 2021 – meeting with OAR staff to hear presentation of the new risk modeling results and to discuss the schedule for the rulemaking and other related items.

June 24, 2021 – meeting with [REDACTED] of ORD for update on IRIS value.

July 8, 2021 – meeting with Sterigenics for general discussion on EtO; discussion *may* have included presentation of concerns about 2016 IRIS value and “commitment to work with EPA.” Attendees from Van Ness Feldman on behalf of Sterigenics – [REDACTED].

August 26, 2021 – meeting with OAR staff to discuss pre-proposal outreach efforts including updated risk modeling results.

September 8, 2021 -- meeting with OAR to discuss draft response to ACC’s request for correction (RFC) regarding use of the 2016 IRIS EtO cancer risk value in the 2014 NATA.

October 5, 2021 – pre-brief for meeting with Deputy Administrator McCabe concerning community risk notification plans.

October 6, 2021 – meeting with DA McCabe to discuss community notification effort with particular reference to [REDACTED]
[REDACTED]. (Memo)

October 14, 2021 – meeting with AdvaMed to discuss the agency’s consideration of additional regulatory action for EtO emissions from commercial sterilizers. Attendees – [REDACTED] (lobbyist), [REDACTED] and [REDACTED], both of AdvaMed; [REDACTED] of Medtronic; [REDACTED] of Becton-Dickinson; [REDACTED] of Steris.

October 18, 2021 – meeting with DA McCabe and Regions to discuss plans for community risk notification.

October 27, 2021 – meeting with Acting Regional Administrator to discuss community risk notification plans and pre-rulemaking outreach. (Memo)

December 2 and 6, 2021 – meetings with OAR and OCIR staff to prepare for meeting with Congressional EtO Caucus

December 6, 2021 – meeting with Administrator to prepare for Congressional EtO Caucus meeting.

December 8, 2021 – meeting with Administrator and Congressional EtO Caucus.

January 6, 2022 – meeting with [REDACTED], Deputy Chief of Staff.

January 19, 2022 – briefing for Regional Administrators on risk communication and pre-proposal outreach.

January 25, 2022 – quarterly meeting with Regional Air Division Directors to follow up on January 19 RAs’ meeting.

February 2, 2022 – meeting with OAR staff.

February 8, 2022 -- Pre-brief for the Ethylene Oxide Follow-Up Call

February 18, 2022 – Follow-up Call with Inspector General O'Donnell

March 9, 2022 – meeting with OAR staff for presentation on revised EtO commercial sterilizer risk results based on recent [REDACTED].

March 24, 2022 – meeting with DA McCabe on risk communication and outreach plan.

April 7, 2022 – pre-brief Options Selection

April 13, 2022 – Options Selection

April 21, 2022 – Follow-up with DA McCabe on Options Selection

April 27, 2022 – Check-in on risk communications outreach strategy.

May 5, 2022 – Webinar for States on EtO

May 13, 2022 – prep for community outreach events and presentations.

May 18, 2022 – Regional Administrators prep for community outreach/risk communications.

June 7, 2022 – outreach check-in.

June 8, 2022 – outreach check-in.

June 10, 2022 – Regional Administrators special session on risk communication plans

July 5, 2022 – Pre-brief for meeting with [REDACTED]

July 6, 2022 – Meeting with [REDACTED]

July 28, 2022 – Pre-brief for meeting with [REDACTED].

July 28, 2022 – Meeting with [REDACTED]

August 2, 2022 - Briefing with OAR staff on [REDACTED].

August 2, 2022 – meeting with risk communication leadership/presenters.

August 9, 2022 – meeting with Regional Air Division Directors of outreach and rulemaking.

August 9, 2022 – prep for August 10 National Webinar

August 10, 2022 – National Risk Communication Webinar

August 11, 2022 – Thank You session for outreach/risk communication team

September 21, 2022 – general check-in with OAR staff

October 6, 2022 – meeting with [REDACTED] to discuss NPRM schedule.

October 14, 2022 – update for DA McCabe with OCSPP on EtO actions

October 26, 2022 – OAR staff update on rulemaking process.

January 31, 2023 – with EPA staff to plan for interagency collaboration on EPA EtO actions.

February 10, 2023 – call with DA McCabe on interagency issues.

February 13, 2023 – meet with EPA staff to pre-brief EPA/FDA/OIRA discussion on the EPA Ethylene Oxide NESHAP NPRM.

February 14, 2023 – meet with OMB and FDA to discuss proposal.

March 22, 2023 – meet with Regional Administrators to brief on EtO proposal announcement.

March 30, 2023 – meet with Administrator Regan to discuss messaging and outreach on OAR EtO proposal and OCSPP PID on worker exposure to EtO.

March 30, 2023 – meet with [REDACTED] to prepare for announcement of EPA EtO actions.

April 10, 2023 – brief state regulators on pending EtO proposal announcement.

April 10-11, 2023 – Congressional briefings and press call.

April 25, 2023 – Thank You call with EtO rule team.

May 31, 2023 – EPA prep meeting for FDA meeting

June 1, 2023 – EPA-FDA prep meeting for Congressional briefing on EtO actions and [REDACTED].

June 9, 2023 – EPA meeting to prepare for [REDACTED].

June 12, 2023 – [REDACTED] discussion of EtO actions and [REDACTED].

June 12, 2023 – meeting to hear presentations from environmental and community advocates on EtO proposal. EarthJustice, [REDACTED], and various local advocates.

June 13, 2023 – meeting with Administrator and the following: [REDACTED] – CEO, AdvaMed; [REDACTED] – President and CEO, STERIS; [REDACTED] – Chairman and CEO, PavMed; [REDACTED] –

CEO, Alcon; [REDACTED], President and CEO, Actuated Medical; [REDACTED], Chief Advocacy Officer and Head of External Affairs, AdvaMed; [REDACTED], Consultant, Mehlman Consulting

June 20, 2023 – internal check-in.

June 20, 2023 – meeting with Administrator to discuss EPA EtO actions and upcoming discussion with FDA Commissioner.

June 26, 2023 – discussion with OAR staff.

August 14, 2023 - Pre-Brief: EtO Commercial Sterilizers Early Guidance

August 17, 2023 - EtO commercial sterilizers - Early Guidance



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