

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

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| MD 7.9 | ETHICS APPROVALS AND WAIVERS | DT-09-11 |
| <i>Volume 7</i> | Legal and Ethical Guidelines | |
| <i>Approved By:</i> | Gregory B. Jaczko, Chairman | |
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| <i>Issuing Office:</i> | Office of the General Counsel | |
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EXECUTIVE SUMMARY

Directive and Handbook 7.9 provide employees with the policies and procedures for approvals or waivers before the employees engage in certain activities or accept certain gifts or awards.

This revision makes it clear that the Inspector General is authorized to approve attendance for himself or herself and OIG employees at widely attended gatherings and certain waivers for OIG employees. It also authorizes directors of offices reporting directly to the Commission to approve outside employment for their employees and grant conflict of interest waivers, after consultation with OGC. It updates legal references. It authorizes the EDO to grant a waiver from the post-employment restrictions to any former Federal employee to furnish scientific or technological information; the current directive only authorizes such a waiver to former NRC employees.

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I. Policy

It is the policy of the U.S. Nuclear Regulatory Commission that NRC employees receive approval or a waiver before engaging in certain activities or accepting certain gifts or awards, in accordance with ethics statutes or regulations promulgated by the Office of Government Ethics (OGE). The NRC is authorized under OGE regulations to designate individuals who can act upon requests for approvals or waivers. All approvals or waivers must be in writing unless otherwise specified in Handbook 7.9. The deciding official is to use sound judgment in determining whether to grant a request for an approval or a waiver and has the discretion to deny a request, when warranted. The authority to grant ethics waivers or approvals may not be redelegated below the level of deputy office director or deputy regional administrator, unless specifically permitted in this directive.

II. Objectives

- To inform employees when prior approval or a waiver is required.
- To inform employees which NRC officials have been delegated authority to grant the necessary approvals or waivers.

III. Organizational Responsibilities and Delegations of Authority

A. Chairman

1. After consultation with the Office of the General Counsel (OGC)—
 - (a) Waives security ownership restrictions in accordance with Management Directive (MD) 7.7, “Security Ownership.”
 - (b) Issues waivers to members of advisory committees who are special Government employees to permit the members to work on matters affecting a personal financial interest because of the agency's need for the individual's services.
 - (c) Issues waivers and approvals addressed in this directive to Commissioners, or the heads of offices reporting to the Chairman or to the Commission, except for those waivers or approvals that must be given by the General Counsel.

- (d) After consultation with the Director of OGE, determines whether post-employment restrictions can be waived for former employees of the NRC or other Executive Branch agencies who have outstanding qualifications in a scientific, technological, or other technical discipline.
2. As appropriate, the Chairman will consult with the other Commissioners before acting upon a request for an approval or waiver.

B. Commissioners

1. Approve their own attendance at widely attended gatherings.
2. After consultation with OGC, issue waivers or approvals addressed in this directive to members of their personal staff. No consultation with OGC is required for approvals of attendance at widely attended gatherings or for disposal of perishable gifts.

C. Inspector General (IG)

1. Approves his or her own attendance at widely attended gatherings.
2. Approves the attendance of employees in the Office of the IG (OIG) at widely attended gatherings and the disposal of perishable gifts. It is the IG's intention not to approve free attendance for OIG employees.
3. After consultation with OGC, the IG may—
 - (a) Issue waivers or approval to OIG employees in the manner addressed in this directive.
 - (b) Authorize former employees of the NRC or other Executive Branch agencies who are subject to certain post-employment restrictions to furnish technical or scientific information to the OIG.
 - (c) Issue waivers that will allow OIG employees to participate in particular matters affecting the financial interests of persons or entities in which the employee or certain members of his or her family have a financial interest.
 - (d) Approve outside employment and outside activity for OIG employees, in accordance with MD 7.8, "Outside Employment and Other Outside Activities."

D. General Counsel

1. Advises the Chairman, Commission, IG, EDO, and office directors on requests for waivers and approvals addressed in this directive.
2. Approves the acceptance of non-NRC awards and honorary degrees awarded to NRC employees.
3. Approves service as an expert witness on behalf of a private party before a U.S. court or agency if the United States is a party or has an interest.
4. Authorizes noncareer employees to engage in teaching for compensation.

5. Consults with the United States Office of Government Ethics, where practicable, before providing advice to senior agency officials on requests for waivers under 18 U.S.C. 207 or 208.
6. May delegate the above authority to the designated alternate ethics official or to a deputy counselor.

E. Executive Director for Operations (EDO)

1. After consulting with OGC—
 - (a) Approves outside employment and outside activity requests for employees in offices reporting to the EDO in accordance with MD 7.8, “Outside Employment and Other Outside Activities.”
 - (b) Authorizes former employees of the NRC or other Executive Branch agencies who are subject to certain post-employment restrictions to furnish technical or scientific information to the NRC.
 - (c) Authorizes employees in offices reporting to the EDO to participate in particular matters affecting an entity that awarded the individual an extraordinary payment upon termination of employment with that entity.
 - (d) Authorizes special Government employees to act as agent or attorney for another person in the performance of work under a grant by or a contract with the United States or for the benefit of the United States.
 - (e) Issues waivers or approvals addressed in this directive to office directors and regional administrators who report to the EDO.
2. These authorities may be exercised by the Deputy Executive Directors for Operations.

F. Directors, Offices Reporting Directly to the Commission

1. After consulting with OGC—
 - (a) Approve outside employment and outside activity for employees in their respective office, in accordance with MD 7.8, “Outside Employment and Other Outside Activities.”
 - (b) Authorize employees in their respective office to participate in particular matters affecting an entity which awarded the employee an extraordinary payment upon termination of employment with that entity.
2. These authorities may be exercised by a deputy director.

G. Office Directors and Regional Administrators

1. After consulting with OGC—

- (a) Issue waivers that will allow employees to participate in particular matters affecting the financial interests of persons or entities in which the employee or certain members of his or her family have a financial interest.
- (b) Authorize employees to attend widely attended gatherings. This authority may be exercised by an office director, a deputy office director, a regional administrator, or a deputy regional administrator. Although in some cases approval may be given orally, in most cases written approval is either required or nonetheless preferable.
- (c) Authorize employees to participate in matters in which such participation could constitute an appearance of impropriety.

H. Supervisors

- 1. Authorize employees to donate to charity, provide for office consumption, or destroy perishable gifts that the employee is not authorized to accept.
- 2. This approval may be given orally, although in many cases it is prudent to obtain written approval for the disposal.

IV. Applicability

The policy and guidance in this directive applies to all current and former NRC employees and special Government employees.

V. Handbook

Detailed descriptions of the various activities, awards, and gifts that require prior approval and the procedures for obtaining such approval are contained in Handbook 7.9.

VI. Definitions

A. Employee

An NRC employee, a member of the Commission, a special Government employee (unless otherwise indicated), or an employee of another Government agency assigned or detailed to the NRC.

B. Former Employee

A former NRC employee as defined in "Employee" of this section, a former special Government employee as defined in "Special Government Employee" of this section, or a former member of the Commission.

C. Special Government Employee

An NRC employee who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or an intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive

days. The term includes NRC consultants, experts, and members of advisory boards but does not include members of the uniformed services.

VII. References

Code of Federal Regulations

5 CFR Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch."

5 CFR Part 2636, "Limitations on Outside Earned Income, Employment and Affiliations for Certain Noncareer Employees."

5 CFR Part 2640, "Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)."

5 CFR Part 2641, "Post- Employment Conflict of Interest Restrictions."

Nuclear Regulatory Commission Documents

Management Directive 7.7, "Security Ownership."

Management Directive 7.8, "Outside Employment."

Management Directive 10.62, "Leave Administration."

United States Code

"Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government" (18 U.S.C. 205).

"Acts Affecting a Personal Financial Interest" (18 U.S.C. 208).

"Compensation to Members of Congress, officers, and others in matters affecting the Government." (18 U.S.C. 203).

"Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches" (18 U.S.C. 207).

"Salary of Government Officials and Employees Payable Only by United States" (18 U.S.C. 209).

U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)

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I. ETHICS APPROVALS AND WAIVERS

A. Introduction

Ethics statutes and regulations promulgated by the Office of Government Ethics (OGE) require that NRC employees receive approval or a waiver before engaging in certain activities or accepting certain gifts or awards. Management Directive (MD) 7.9 identifies the individuals who have been given authority to grant these approvals or waivers. This handbook describes the activities or acts that require approval or waiver in greater detail and specifies the procedures for obtaining a decision on the request.

B. Security Ownership Exemptions

NRC employees who are subject to the Commission's security ownership restrictions may request from the Chairman an exemption that would permit either their continued holding of prohibited security interests or an extension of time to divest themselves of their prohibited securities. The procedures for obtaining an exemption are specified in Handbook 7.7, "Security Ownership."

C. Approval for Outside Activities

NRC employees, except for special Government employees, are required to obtain written approval before engaging in certain outside activities, including certain outside employment. The procedures for obtaining the approval are specified in Handbook 7.8, "Outside Employment ."

D. Waiver Authorizing Employees To Participate in Matters That Affect a Personal Financial Interest

1. Under 18 U.S.C. 208(a), employees must receive a waiver before they may participate in a particular matter affecting an entity in which they (or any person whose interests are imputed to the employee) have a financial interest. "Imputed" interests include the interests of—
 - (a) The employee's spouse, minor child, or general partner.
 - (b) An entity in which the employee serves as officer, director, trustee, general partner, or employee.
 - (c) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

2. There are regulations issued by OGE, at 5 CFR Part 2640, that specify certain financial interests that are too remote or inconsequential to warrant an employee's disqualification under 18 U.S.C. 208(a).
3. Waivers may be granted upon a determination that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from the officer or employee. In addition, a waiver may be granted for a special Government employee who serves on an advisory committee chartered under the Federal Advisory Committee Act upon a determination that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved.
4. Employees who desire a waiver should contact a deputy counselor in the Office of the General Counsel (OGC) or a regional counsel. Counsel will assist the employee in drafting the appropriate waiver for consideration by the appropriate office director or regional administrator. OGC, where practicable, is to consult with OGE before the waiver is issued and is to provide a copy of the executed waiver to OGE.

E. Widely Attended Gatherings

An employee must obtain approval before accepting from a prohibited source (such as an NRC licensee or contractor) an unsolicited gift of free attendance that exceeds \$20 in value while attending a widely attended gathering. However, there is no objection or need to obtain approval if the value of the free attendance does not exceed \$20.

1. Definitions

- (a) An event is “**widely attended**” if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present. An example of a widely attended gathering would be an event that is open to members throughout a given industry or profession, or if those in attendance represent a range of persons interested in a given matter.
- (b) “**Free attendance**” includes waiver of all or part of the conference or other fee or food, refreshments, entertainment, or materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.
- (c) A “**prohibited source**” is any person who is seeking official action from the agency, does business or seeks to do business with the agency, conducts activities regulated by the agency, or has interests that may be substantially affected by the performance or nonperformance of an employee's official duties. Also, a prohibited source includes an organization in which a majority of its members are described above.

2. Verbal Approval Required

An employee can receive verbal approval to accept the free attendance offered at a widely attended gathering if the invitation comes from a person who does not have interests that could be affected substantially by the performance or nonperformance of the employee's official duties. However, the approving official must first determine that the employee's attendance is in the interest of the agency because it would further agency programs or operations. It may be advisable to document the approval in writing.

3. Written Approval Required

An employee must receive written approval to accept the free attendance if the invitation comes from a person who has interests that could be affected substantially by the performance or nonperformance of the employee's official duties. The approving official must not only determine that the employee's attendance is in the interest of the agency because it would further agency programs or operations but also must determine that the agency's interest in the employee's attendance outweighs concern that acceptance of the free attendance may or may not appear to improperly influence the employee in the performance of official duties. A copy of the written approval should be provided to OGC.

4. Invitation From Nonsponsor

If the offer comes from a person who is not sponsoring the event, free attendance can only be accepted if more than 100 persons are expected to attend and the value of the free attendance does not exceed \$335.

5. Spouse or Guest

If the offer extends to the spouse or guest of the employee, the approving official may authorize the spouse or guest to accept free attendance if others in attendance will generally be accompanied by a spouse or guest. However, the total market value of the free attendance for both the employee and the accompanying spouse or guest cannot exceed \$335.

6. Leave Status

Employees subject to a leave system who are authorized to accept free attendance can only attend the widely attended gathering on official time if granted either excused absence or annual leave pursuant to the procedures in MD 10.62, "Leave Administration." However, employees who speak, serve on a panel, or present information for the agency at a conference or other event need not obtain such approval on the day or days of their speech, panel, or presentation.

F. Appearance of Impropriety

1. If an employee determines that his or her participation in a matter would cause a reasonable person with knowledge of the relevant facts to question his or her impartiality, the employee may not participate in the matter unless he or she has received written authorization. OGE regulations require that, under this provision,

employees must receive authorization before participating in matters affecting any person with whom the employee has a covered relationship.

2. A covered relationship includes any person for whom the employee has within the last 365 days served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. Other covered relationships include a member of the employee's household, a close relative, an organization in which the employee is actively engaged, and a person for whom the employee's spouse, parent, or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. Also, certain discussions regarding prospective employment that would not trigger application of potential criminal sanctions could nonetheless create appearances of impropriety. In such a case, approval would be required before the employee could participate in matters affecting the prospective employer.
3. An employee requesting a waiver to participate in such matters must set forth the relevant circumstances to the approving official in writing. The approving official, as part of the required consultation with OGC, must provide OGC with a copy of the request. OGC will assist the approving official in drafting the response to the employee.

G. Service as an Expert Witness

1. Under OGE regulations, an employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the NRC. Except as provided in the next paragraph, this restriction applies to a special Government employee only if he or she has participated as an employee or a special Government employee in the particular proceeding or matter that is the subject of the proceeding.
2. In addition to the above requirement, a special Government employee who has served or is expected to serve for more than 60 days within a consecutive 365-day period shall not serve as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the NRC is a party or has a direct and substantial interest, unless the employee's participation has been authorized by the NRC.
3. An employee seeking such authorization must submit the relevant facts to OGC in writing. If a Federal agency other than the NRC is representing the Federal Government in the proceeding, the OGC must consult with that agency before making its determination. If the Federal Government is not a party to the proceeding, OGC must consult with the Department of Justice and the Federal agency with the most direct and substantial interest in the matter. OGC will set forth its determinations in writing.

4. No approval is required under the ethics laws when the employee has been subpoenaed as a fact witness by an appropriate authority. An appropriate authority would include a court or a State or local agency.
5. Aside from the ethics regulations, the NRC maintains its own provisions regarding testimony by NRC employees in private litigation. See 10 CFR 9.200 et seq.

H. Awards and Honorary Degrees

1. Awards

- (a) An employee must obtain prior approval from the General Counsel to accept from a prohibited source (such as an NRC licensee or contractor) a bona fide award for meritorious public service or achievement that is valued at more than \$200 or is cash of any amount. In addition, the employee cannot accept the award if it is provided by someone who has interests that can be substantially affected by the performance or nonperformance of the employee's official duties or an association or organization with a majority of members who have such interests.
- (b) To grant approval, the General Counsel must determine that the award is given as part of an established program of recognition. The General Counsel also must determine that these awards have been made on a regular basis or are funded to ensure their continuation on a regular basis and that selection of the recipients is made pursuant to written standards.

2. Honorary Degrees

- (a) The General Counsel must grant approval before an employee can accept an honorary degree from an institution of higher education that is an NRC licensee or contractor. In this case, the General Counsel must determine that the timing of the award of the honorary degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.
- (b) An employee seeking approval to accept an award or honorary degree described above must provide all the relevant facts to the OGC in writing.

I. Acceptance of Perishable Gifts

Employees are not required to return perishable items that cannot be accepted as gifts under OGE regulations. If the employee chooses not to return the item, he or she can, after obtaining approval from his or her immediate supervisor, donate the perishable item to charity, share the item within the office, or destroy the item.

J. Teaching for Compensation by Noncareer Employees

Noncareer employees must receive approval before engaging in teaching for compensation. For purposes of this provision, teaching not only includes formal classroom presentations, but also extends to instruction on an individual basis or in an

informal setting. A request for such approval setting forth the relevant facts should be submitted to OGC.

K. Payments

1. Employees are disqualified for 2 years from participating in any particular matter in which a former employer is a party or represents a party if the employee received an "extraordinary payment" from the entity before entering Government service. An extraordinary payment is defined as any item, including cash or an investment interest, with a value over \$10,000. This disqualification period may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is a party or represents a party.
2. An employee seeking a waiver must set forth the relevant facts to the approving official in writing.

L. Representation by Special Government Employees

Without authorization, special Government employees may not act as agent or attorney for another person in the performance of work under a grant by, or a contract with, or for the benefit of the United States. The special Government employee may engage in such conduct upon a determination published in the Federal Register that the national interest so requires.

M. Post-Employment Representations by Former Federal Employees

1. Under 18 U.S.C. 207, former Federal employees are subject to various post-employment restrictions that limit or preclude an individual from making certain representations to a Federal agency on behalf of persons other than the United States. These restrictions may be waived to permit a former Federal employee to furnish scientific or technological information to the NRC.
2. A former employee of the NRC or another Executive Branch agency may seek such a waiver by submitting a written statement to the Executive Director for Operations (EDO) that indicates he or she is a former employee subject to post-employment restrictions and that briefly summarizes the content of the proposed communication, describes his or her involvement, if any, as an employee of the Government in the matter to be discussed, and certifies that the communication he or she desires to make is solely for the purpose of furnishing scientific or technological information.
3. The primary factor that the EDO will consider before acting on such requests is whether receipt of the scientific or technological information would further the NRC mission. The EDO shall consult with OGC prior to making a decision.
4. If the Chairman, in consultation with the Director of OGE, makes a certification published in the *Federal Register* that the former employee has outstanding qualifications in a scientific, technological, or other technical discipline, is acting with respect to a particular matter that requires such qualifications, and that the national

interest would be served by the participation of the former employee, the Chairman may authorize communications that are not limited to transmission of scientific or technological information. A former employee seeking such a waiver should submit a written request setting forth the pertinent facts to the Chairman. The Chairman shall consult with OGC prior to making a decision.