

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

MD 7.12	ENFORCEMENT OF POST-EMPLOYMENT RESTRICTIONS	DT-09-08
<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		
<p>Directive and Handbook 7.12 provide policies and procedures for enforcing restrictions under the post-employment law and regulations.</p> <p>The revision extends to directors of offices reporting directly to the Commission the same authority provided to the EDO to decide whether to institute an administrative proceeding against a former employee of their respective office. The references include the criminal conflict of interest laws. The directive redrafts the summary of the post-employment law and updates the definition of a former senior employee under 18 USC 207(c).</p>		

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I. Policy

It is the policy of the U.S. Nuclear Regulatory Commission, pursuant to the Ethics in Government Act of 1978 (18 U.S.C. 207, 216), as amended, to restrict certain post-employment activities of former Federal Government employees. The text of these restrictions and the implementing regulations of the Office of Government Ethics are published in 5 CFR Parts 2637 and 2641.

II. Objectives

- To provide guidelines for reporting possible violations.
- To describe NRC management responsibilities in handling suspected violations.
- To describe NRC procedures when administrative actions are necessary because violations are found to exist.

III. Organizational Responsibilities and Delegations of Authority

A. The Inspector General (IG)

1. Provides policy direction for and conducts, supervises, and coordinates audits, inspections, and investigations relating to all NRC programs and operations.
2. Refers criminal matters to the Department of Justice (DOJ) for prosecution and coordinates management referrals for administrative action by the agency.

B. The General Counsel

1. Provides advice to the appropriate agency manager whether a former employee has violated post-employment legal requirements.
2. Serves as legal representative for the NRC staff in any administrative proceeding.

C. The Executive Director for Operations (EDO)

The EDO or other appropriate agency manager decides whether to institute an administrative proceeding against a former employee who served in an office or region that reported to the Commission through the EDO, after reviewing IG's findings.

D. Director, Offices Reporting Directly to the Commission

Such director, or other appropriate manager, decides whether to institute an administrative proceeding against a former employee of the respective office, after reviewing IG's findings.

E. The Chief Administrative Judge, Atomic Safety and Licensing Board Panel (ASLBP)

Appoints a presiding officer to conduct administrative proceedings.

F. The Commission

Hears appeals of administrative decisions rendered by the presiding officer.

IV. Applicability

This directive and handbook apply to and must be followed by all former NRC employees, including former special Government employees.

V. Handbook

Guidelines for reporting suspected violations and administrative procedures for enforcing the post-employment restrictions are contained in Handbook 7.12.

VI. Definitions

A. Appropriate Agency Manager

The Chairman, The Executive Director for Operations, or the designee selected by one of those individuals.

B. Employee

An NRC employee, a special Government employee (unless otherwise indicated), or an employee of another Government agency assigned or detailed to the NRC for more than 30 days.

C. Former Employee

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

D. Special Government Employee

An NRC employee who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term includes NRC consultants, experts, and members of advisory committees, but does not include a member of the uniformed services.

VII. References

Code of Federal Regulations—

“Regulations Concerning Post-Employment Conflict of Interest,” 5 CFR Parts 2637 and 2641.

“Rules for Formal Adjudications” (10 CFR 2.700-2.713).

United States Code—

Ethics in Government Act of 1978, as amended (5 U.S.C. App.).

“Criminal Conflict of Interest Statutes” (18 U.S.C. 201-209).

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

DH 7.12

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Directive and Handbook 7.12 provide policies and procedures for enforcing restrictions under the post-employment law and regulations.

The revision extends to directors of offices reporting directly to the Commission the same authority provided to the EDO to decide whether to institute an administrative proceeding against a former employee of their respective office. The references include the criminal conflict of interest laws. The directive redrafts the summary of the post-employment law and updates the definition of a former senior employee under 18 USC 207(c).

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I. PROCEDURES TO ENFORCE POST-EMPLOYMENT RESTRICTIONS

A. Reporting of Possible Violation

1. Any person obtaining information of a possible violation by a former NRC employee of the post-employment restrictions set forth in the criminal post-employment statute or implementing regulations (18 U.S.C. 207, 5 C.F.R. 2641) should report the facts forming the basis for the possible violation to the Office of the Inspector General (OIG).
2. No former NRC employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which he or she participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest.
3. A former NRC supervisor is also prohibited, for two years after termination of service, from knowingly making, with intent to influence, such communication to or appearance before an employee of the United States on behalf of any other person (other than the United States) in connection with a particular matter involving a specific party or parties which were under that former supervisor's official responsibility during the last year of service.
4. A former employee who was paid at a rate of basic pay equal to or greater than 86.5 percent of the rate of basic pay for level II of the Executive Schedule is prohibited, from one year after termination from that position, from making, with intent to influence, any communication to or appearance before an NRC employee on behalf of any other person (other than the United States) in connection with a particular matter on which official action is sought. These former senior employees are also prohibited, for one year after separation from that position, from knowingly representing, or aiding or advising, a foreign government before an employee of the United States, with intent to influence, on a decision by that employee.

B. Investigation of Possible Violation

1. The OIG will make an initial evaluation of the facts presented in the allegation and, if warranted, initiate an investigation. If the matter is determined to be substantiated, the Inspector General (IG) will expeditiously provide such information to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice (DOJ). Any further investigation or administrative action must be coordinated with the DOJ to avoid prejudicing possible criminal or civil proceedings.
2. If the DOJ informs the Commission that it does not intend to institute criminal or civil proceedings, the Commission will be free to pursue administrative action. The OIG will provide a copy of the investigative report to the appropriate agency manager for administrative action and send an information copy of the report to the General Counsel.

C. Initiation of Administrative Proceedings

The appropriate agency manager will review the IG report. If that official, in consultation with the General Counsel (GC), determines that reasonable cause exists to believe that the former Government employee has violated 18 U.S.C. 207 or any of the implementing regulations, the appropriate agency manager will decide whether to initiate an administrative proceeding based on the IG report. If the agency manager decides to initiate an administrative proceeding, he or she will inform the GC of the basis for that decision.

D. Administrative Sanctions

The NRC may impose appropriate administrative sanctions, including barring the former employee from appearing before the agency for a period of time.

E. Notice

When the agency manager decides to institute a proceeding, that official will serve notice on the former employee of the intent to initiate administrative action. Such notice must be made by certified mail and must include—

1. A statement of allegations and the basis for those allegations sufficiently detailed to enable the former Government employee to prepare an adequate defense.
2. A description of the proposed administrative sanction.
3. A copy of the statute and regulations alleged to be violated.
4. Notification of the right to request a hearing within 20 days of the date of the notification.
5. An explanation of the method by which a hearing may be requested, including the name and address of the person to whom this request should be sent.
6. Notification of the right within 30 days of the date of the notification either to submit additional relevant information by affidavit or to provide a written brief. The submittal of additional information or a brief must be in writing and is in lieu of a hearing. For good cause shown, this 30-day period may be extended by the agency manager.

F. Agency Management Decision

In the event the former employee fails to request a hearing in a timely fashion, the appropriate agency manager evaluating the written record, including any additional information or written brief filed in accordance with Section I.E.6. of this handbook, will render a decision to take the proposed administrative sanction or an action less severe than that proposed. This sanction will become the final agency action.

G. Appointment or Disqualification of the Presiding Officer

When a former employee submits a timely request for a hearing, the Chief Administrative Judge, Atomic Safety and Licensing Board Panel (ASLBP), will appoint a presiding officer within a reasonable time. The presiding officer will be an attorney

member of the ASLBP. The presiding officer appointed may not have participated in any manner in the decision to initiate the proceedings.

H. Hearing

1. Within 20 days of the submission of a timely hearing request, the NRC will provide the individual with all relevant documentation relied upon by the agency as a basis for imposing the proposed administrative sanction.
2. The presiding officer shall establish a reasonable time, date, and place to conduct the hearing, including any prehearing conferences. The hearing will be closed to the public unless the former employee requests a public hearing. In setting the date, the presiding officer shall consider the former employee's need for—
 - (a) Adequate time to prepare a proper defense.
 - (b) An expeditious resolution of the allegation(s).
3. The parties shall have, at a minimum, the following rights at the hearing:
 - (a) To represent oneself or to be represented by counsel.
 - (b) To obtain discovery.
 - (c) To introduce and to examine witnesses, whose testimony will be presented under oath or affirmation administered by the presiding officer, and to submit physical evidence.
 - (d) To seek and have the presiding officer issue subpoenas as authorized by law, except that the attendance and testimony of NRC employees or the production of records or documents in the custody thereof, shall be governed by the provisions of 10 CFR 2.709(h).
 - (e) To confront and to cross-examine adverse witnesses, whose testimony will be presented under oath or affirmation administered by the presiding officer.
 - (f) To present oral argument.
 - (g) To receive a transcript or recording of the proceedings on request.
4. In any hearing, the NRC will have the burden of proof and must demonstrate by a preponderance of the evidence that a law has been violated and that the proposed administrative sanction is appropriate.
5. The presiding officer shall make a determination exclusively on matters of record in the proceeding and shall set forth all findings of fact and conclusions of law relevant to the matters at issue in a written initial decision, including a decision on the appropriateness of the proposed administrative sanction. The presiding officer may not increase the sanction proposed by the agency. The presiding officer's decision will become effective upon issuance, unless the presiding officer determines otherwise. The presiding officer's decision will become the final agency action unless an appeal is filed with the Commission.

I. Appeal

1. Except as noted below, within 30 days of the date of the presiding officer's initial decision, either party may appeal the decision to the Commission and shall serve notice of the appeal and its supporting brief on the other party. Within 30 days of the date of service of this appeal, the other party may file a response.
2. The Commission will review the entire record and base its decision on the appeal solely on the record of the proceedings. No appeal will be heard if the former employee did not previously request a hearing.
3. If the Commission modifies or reverses the presiding officer's decision, the findings of fact and conclusions of law that differ from those of the presiding officer must be specified in writing.

J. Implementation of Disciplinary Action

After a final administrative decision finding the former employee in violation of 18 U.S.C. 207 or of the regulations issued thereunder, the appropriate agency manager will make effective the final administrative sanction.

K. Judicial Review

Any person found to have violated 18 U.S.C. 207 or the implementing regulations thereunder may seek judicial review of the final administrative determination.