



# NRC Ethics

## Office of the General Counsel (OGC)

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#### MAJOR ETHICS RULES AFFECTING NRC SPECIAL GOVERNMENT EMPLOYEES

Employees of the Nuclear Regulatory Commission (NRC), both full-time and part-time, should be aware that they are subject to the laws and regulations on ethics. These include the criminal conflict of interest statutes (18 U.S.C §§ 201-209) and the Government-wide regulations on employee conduct, financial disclosure, ethics training, and post-employment (5 CFR §§ 2634-2640). The NRC also has regulations on outside employment and security ownership (5 C.F.R. § 5801). Any employee who has a question about any ethics matter should contact an OGC Deputy Ethics Official.

The following is a summary of the major conflict of interest laws and regulations that apply to NRC employees.

#### **Financial Interests**

A criminal conflict of interest law (18 USC § 208(a)) prohibits employees, unless they receive a waiver, from participating personally and substantially in any particular Government matter (including a rulemaking) that could directly and predictably affect the employee's financial interest or the financial interest of any of the following:

- (a) The employee's spouse or minor child;
- (b) The employee's general partner or an organization in which the employee serves as an officer, director, trustee, general partner, or employee; or
- (c) An organization with which the employee is negotiating or has an arrangement for prospective employment.

However, government-wide regulations exempt from this prohibition certain financial interests (5 C.F.R §2640). For example, employees can participate in a Government particular matter involving specific parties if the value of their security holdings does not exceed \$15,000. If employees are working on a generic matter, such as a rulemaking, they can also participate if the value of their security holdings in a single entity affected by the rulemaking does not exceed \$25,000 (or \$50,000 in all affected entities).

*Example: An employee may not work on a license amendment if the employee owns stock in the licensee worth more than \$15,000 (unless the employee receives a waiver from his or her office director or regional administrator after consultation with OGC). If the employee is assigned to write a rule that could affect a number of licensees, the employee could work on that rule if the value of the stock in one of the licensees affected does not exceed \$25,000; the employee could also work on the rule if the value of the employee's stocks in all entities affected by the rule does not exceed \$50,000.*

Employees can participate in matters affecting holdings in a mutual fund they own if the fund's investments are diversified. (Diversified means that the fund does not have a policy of concentrating its investments in a specific sector, such as an industry, business, foreign country, or State.) Employees can also participate in matters affecting holdings in a sector fund if their investment in the sector fund does not exceed \$50,000.

*Example: An employee who owns shares in ABC Growth Fund, a “diversified” mutual fund, can work on an NRC contract even though the fund’s portfolio contains stock of the contractor. If the employee owns more than \$50,000 in a “sector” mutual fund (such as XYZ Telecommunications Fund), the employee could not work on a telecommunications contract if the fund’s portfolios contains securities of the contractor.*

## **Impartiality**

The standards of conduct (5 C.F.R. § 2635 subpart E) require employees to disqualify themselves, unless they receive a waiver, from participating in any particular NRC matter involving specific parties that the employee knows is likely to have a direct and predictable effect on the financial interests of a member of the employee's household if a reasonable person would question the employee's impartiality. This ban also includes anyone with whom the employee has a covered relationship if that person is or represents a party. (A covered relationship includes: anyone with whom the employee has a business, contractual, or other financial relationship; a relative with whom the employee has a close personal relationship; and anyone the employee has served during the past year as officer, director, trustee, general partner, agent attorney, consultant, contractor, or employee.)

*Example: An employees involvement in an NRC inspection where the employees brother is an officer of the licensee would raise a question of impartiality. The question would also be raised if the employee worked for the licensee within a year prior to the proposed inspection.*

## **Security Ownership Restrictions**

The NRC supplemental standards of conduct (5 C.F.R. §5801.102) prohibit certain employees, as well as their spouses and minor children, from owning any securities issued by nuclear entities on an OGC-published list. This prohibition extends to all senior employees (i.e., SES, SLS, or above) and employees GG-15 or below with regulatory responsibilities whose position is listed in Management Directive 7.7. An employee who may have to pay capital gains taxes from the sale of prohibited securities can obtain, through OGC, a Certificate of Divestiture, which allows deferral of payment of those taxes.

## **Gifts**

### **A. From Outside Sources**

The standards of conduct (5 C.F.R. § 2635 subpart B) prohibit employees from soliciting or accepting gifts directly or indirectly from prohibited sources, which includes licensees, applicants, contractors, anyone seeking business with the agency, anyone with interests that the employee could affect, or an organization with a majority of members who meet the above description. Employees cannot accept gifts given because of their NRC position.

Employees are also prohibited from accepting gifts from the same source so frequently that a reasonable person with knowledge of the relevant facts would be led to believe the employee is using public office for private gain.

Exceptions to this prohibition include gifts given because of any non-Federal employment, coffee or other refreshments provided at meetings, non-cash gifts valued at \$20 or less from any one source (with a \$50 limit during a year), gifts from friends or family members, and attendance at widely attended gatherings. The NRC can permit a nonprofit organization that is tax exempt under section 501(c)(3) of the Internal Revenue Code to pay for an employees official travel to a meeting or for training.

The Commission emphasizes that, because it is essential that NRC employees maintain an arms-length relationship with regulated entities and contractors, it would be prudent for employees to exercise care even in accepting permitted gifts or meals from prohibited sources.

## **B. Gifts to Supervisors**

The standards of conduct (5 C.F.R. § 2635 subpart C) prohibit employees from giving a gift to another employee who directs or evaluates their performance, including superiors of their immediate supervisor. It also prohibits an employee from accepting a gift from an employee receiving less pay unless there is no subordinate-superior relationship and there is a personal relationship justifying the gift. In addition, it prohibits supervisors from coercing a gift from a subordinate.

Exceptions to this prohibition include non-cash items valued at \$10 or less given occasionally (such as birthdays or holidays), refreshments shared in the office, and hospitality offered at home. Gifts of more than \$10 can be given for special, infrequent occasions, such as retirement, marriage, or the birth or adoption of a child; only in these rare cases can an employee solicit funds for a gift from other employees.

## **Bribery**

The criminal law (18 U.S.C. § 201) prohibits employees from seeking, accepting, or agreeing to receive anything of value for being influenced in the performance or nonperformance of an official act.

## **NRC Time and Property**

The standards of conduct (5 C.F.R. §§ 2635.704-.705) require employees to use official time in an honest effort to perform official duties and to protect and conserve Government property. Employees cannot use Government property, including the charge card and vehicles, for an unofficial purpose without authorization. However, employees may use NRC information technology, such as telephones, computers, the Internet, e-mail, photocopiers, or fax machines, for some unofficial purposes that do not interfere with official operations, involve minimal or no additional expense to the Government, and are conducted on non-work time. (The policies on this limited use are contained in Management Directive 2.7).

## **NRC Title or Position**

The standards of conduct (5 C.F.R. § 2635.702) prohibit employees from using their NRC title or position for personal gain or the gain of anyone else. It also prohibits employees from appearing to show preferential treatment to or endorsing anyone.

## **Nonpublic Information**

The standards of conduct (5 C.F.R. §§ 2635.704-705) prohibit NRC employees from engaging in a financial transaction using nonpublic information, allowing the improper use of nonpublic information to further the interest of the employee or anyone else, or making any unauthorized disclosure of such information. (Nonpublic information means information gained through Federal employment that has not been made available to the general public. It includes NRC plans, policies, reports, studies, financial plans, or internal data protected by the Privacy Act or withholdable under the Freedom of Information Act.)

NRC policy prohibits employees from taking nonpublic NRC documents upon termination of NRC service, including agency records the employee wrote or reviewed that have not been released to the public. NRC requests that former employees not communicate nonpublic information to others after termination of service nor use nonpublic information in grant applications or contract bids submitted to the agency.

*Example: A former employee should not give a client nonpublic NRC information concerning an ongoing investigation. The former employee should also not provide the client with nonpublic information which would be part of the clients bid for an NRC contract.*

## **Outside Employment**

The NRC supplemental standards of conduct (5 C.F.R. § 5801.103) prohibit employment on personal time with certain non-NRC entities, including licensees, applicants, and contractors, unless the employee obtains prior written approval. (Prior approval is even required to teach at a university that is a materials licensee, although it is generally given.)

## **Supplementing Federal Salary**

The criminal law (18 U.S.C. § 209) prohibits employees from receiving any salary or supplementation to their Government salary for carrying out their official services from anyone other than the Government (except a State, county, or municipality).

*Example: An employee who is making a speech while on official duty cannot accept a fee from the organization which sponsored the event.*

## **Teaching, Speaking, or Writing**

The standards of conduct (5 C.F.R. § 2635.807) prohibit, with limited exceptions, employees from receiving compensation for outside teaching, speaking, or writing that relates to official duties. This includes activities where the subject matter deals in significant part with any matter currently assigned or was assigned to the employee during the previous year or any ongoing or announced NRC policy, program, or operation.

*Example: An employee could receive a fee for delivering a lecture to a group of stamp collectors about some valuable stamps because the lecture does not relate to official duties. However, the employee could not lecture for a fee on the NRC regulations on plant licensing because it deals in significant part with agency programs and operations.*

This restriction does **not** apply to teaching a regularly established course at an institution of higher learning, an elementary or secondary school, or a program sponsored and funded by the Federal, State, or local Government.

*Example: An employee who is a professor at a university could continue to teach a regular course discussing NRC programs provided that the NRC information used is available to the public. (If the university has a license from the NRC, the NRC supplemental conduct regulations require that the employee obtain written approval prior to teaching this course.)*

## **Fundraising**

The standards of conduct (5 C.F.R. § 2635.808) prohibit the use of official title or position to raise funds for any organization unless authorized, such as the Combined Federal Campaign. It also prohibits fundraising from subordinates or anyone the employee knows is a prohibited source.

## **Representations to the Government**

The criminal law (18 U.S.C. § 205) prohibits employees from representing a non-Federal party, with or without compensation, before any Federal agency or court on any particular matter in which the United States is a party or has a direct and substantial interest, such as a Government proceeding, application, contract, claim, rulemaking, or investigation. A similar statute (18 U.S.C. § 203) prohibits employees from receiving any compensation for representational services by the employee or anyone else to a Federal agency or court on a particular Government matter.

*Example: An NRC employee could not write to the NRC or any other Federal agency on behalf of a private organization to urge approval of its grant application, even if the employee were not receiving any fee for this service. It also makes no difference that the organization is a charity in which the employee has no financial interest or holds no office.*

## **Job Seeking**

The criminal statutes (18 U.S.C. § 208(a); 5 C.F.R. § 2635 subpart F) require employees to disqualify themselves from participating in any particular NRC matter, including rulemaking and other generic matters, that will have a direct and predictable effect on the financial interest of a person with whom the employee is negotiating or has any arrangement for future employment unless the employee receives a waiver.

*Example: An employee may not work on a license amendment if the employee has applied for a position with the licensee. If the employee wishes to pursue a job with that licensee, the employee must have the amendment assignment transferred to another employee before soliciting employment with the licensee.*

## **Post-Employment Restrictions**

The criminal law (18 U.S.C. § 207) prohibits all former employees from ever representing, with intent to influence, a non-Federal party to a Federal agency or court on any particular matter involving specific parties in which the former employee personally and substantially participated as a Government employee. (A particular matter involving parties includes a Government contract, grant, litigation, license application or amendment, investigation, inspection claim, or enforcement action. It does not include general rulemaking, legislation, or the formulation of general policy, objectives, or standards.)

*Example: A former NRC employee who was directly involved in an enforcement action while at the agency could not later, after leaving Government service, appear before the agency on behalf of the licensee on that specific enforcement action.*

Former employees who were NRC supervisors are prohibited for two years after leaving the agency from representing, with intent to influence, a non-Federal party to a Federal agency or court on any particular matter involving specific parties that was pending under their official responsibility during the last year of Government service.

*Example: Within a year of retirement, a supervisor assigns to a subordinate a proposed license amendment for review. That supervisor cannot represent the licensee before the NRC on that amendment for two years after retirement even though the supervisor had no substantive involvement with the amendment while at the agency.*

Former senior employees (i.e., paid at a rate of basic pay equal to or greater than 86.5% of the rate of basic pay for level II of the Executive Schedule) cannot represent, with intent to influence, for one year after termination of Federal service a non-Federal party before the NRC on any matter on which official action is sought, even on matters that were not under the former official's responsibility. These former senior employees also cannot represent or aid or advise a foreign government or foreign political party on influencing a Federal employee for one year after termination of Federal service.

## **Expert Witness**

The standards of conduct (5 CFR § 2635.805) prohibit employees from serving as expert witnesses, with or without compensation, before a U.S. court or agency for a non-Federal party in a proceeding in which the United States is a party or has a direct and substantial interest unless authorized by NRC's General Counsel.

## **Political Restrictions**

The Hatch Act (5 U.S.C. §§7321-7326) permits employees to register and vote, contribute funds to any candidate, volunteer in partisan elections (i.e., elections where candidates run on political party labels), and fully participate in "non-partisan" elections (including running for office and soliciting funds). However, the Hatch Act prohibits employees from running for office or soliciting funds from the general public in partisan elections, engaging in political activities while on duty, in a Government office or vehicle, or while wearing a Government uniform or insignia. It also prohibits wearing political buttons while on duty.

There are different rules under the Hatch Act for career members of the Senior Executive Service. In particular, they are prohibited from taking an active role in a partisan political campaign.

## **Procurement**

### **A. Procurement Integrity Act (41 U.S.C. § 423; 48 C.F.R § 3.104)**

Employees who personally and substantially participate in an NRC procurement over \$100,000 must promptly report in writing to their supervisor and ethics official any contacts with or by a bidder or offeror regarding possible non-Federal employment. They must then either reject the possibility of non-Federal employment or disqualify themselves from further participation in that procurement unless participation is authorized in writing.

Former employees who served in certain procurement positions or who made certain decisions on a procurement exceeding \$10 million are prohibited from accepting compensation from that contractor for serving as an employee, officer, director, or consultant for one year after ceasing performance on that procurement.

Current and former Federal employees with access to contractor bid or proposal or source selection information are prohibited from knowingly disclosing this information before the award of the contract, unless authorized. This prohibition applies to anyone who is acting or has acted on behalf of the Government or who advised the Government on a procurement. In addition, the regulations prohibit anyone from knowingly obtaining this information prior to the award of the contract without authorization.

### **B. NRC Contracts**

The NRC procurement regulations (48 C.F.R. §2009.100) provide that the NRC will not award a noncompetitive contract or task order to anyone who was employed by the agency within two years of the date of the request for the procurement action for that contract or task order, unless a waiver is granted. This restriction also applies to a firm in which the former employee is a partner, principal officer, majority stockholder, or is otherwise controlled or predominantly staffed by former NRC employees. Furthermore, this restriction applies to any former NRC employee acting as a principal under a task order type contract or as a principal under a noncompetitive contract awarded under the Small Business Administration 8(a) program.

In addition, the Federal Acquisition Regulations (48 C.F.R. § 3.601) prohibit awarding a contract to a current Federal employee or a business concern substantially owned by one or more Federal employees.

### **Program Fraud Civil Remedies Act**

The Program Fraud Civil Remedies Act subjects anyone who knowingly makes or submits a false claim or statement to the NRC to a civil penalty of not more than \$6,000 for each false claim or statement as well as twice the amount of any payments made by the agency (31 U.S.C. §§ 3801-3812; 10 C.F.R. § 13).

## **Foreign Governments**

### **A. Emoluments Clause**

The Emoluments Clause of the United States Constitution (Article 1 § 9, clause 8) prohibits Federal employees from engaging in any employment with a foreign government or the political subdivision of a foreign government, including a public university or a commercial enterprise owned or operated by a foreign government. This prohibition does not apply to a foreign privately-owned corporation or an international organization, such as the International Atomic Energy Agency.

### **B. Foreign Gifts and Decorations Act**

The Foreign Gifts and Decorations Act (5 U.S.C. § 7342; 41 C.F.R §§ 101-49) prohibits Federal employees from accepting a gift exceeding \$415 in value from a foreign government. This prohibition includes an international organization, such as the IAEA. A prohibited gift even includes travel expenses exceeding \$415 in value, unless the travel takes place entirely outside the United States. The restriction also extends to the employees spouse and dependents. Employees can accept travel and travel-related expenses from a foreign government for activities taken on behalf of that government as part of official duties.

## **Financial Disclosure (5 C.F.R. § 2634)**

### **A. Public Report (Standard Form 278)**

Employees who are in the Senior Executive Service, Senior Level, or above must file a public financial disclosure report within 30 days after beginning service, by May 15 of each year thereafter, and within 30 days after termination of service.

### **B. Confidential Report (OGE Form 450/450A)**

Employees at GG-15 or below whose positions are listed in Management Handbook 7.6 must file a confidential financial disclosure report within 30 days after beginning service and by October 31 of each year thereafter.