

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

<b>MD 7.12</b>	<b>ENFORCEMENT OF POST-EMPLOYMENT RESTRICTIONS</b>	<b>DT-23-21</b>
<i>Volume 7:</i>	Legal and Ethical Guidelines	
<i>Approved By:</i>	Marian L. Zobler, General Counsel	
<i>Date Approved:</i>	September 21, 2023	
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<i>Issuing Office:</i>	Office of the General Counsel	
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**EXECUTIVE SUMMARY**

Management Directive 7.12, “Enforcement of Post-Employment Restrictions,” is revised to—

- Clarify that the procedures described in Handbook 7.12 may also be used for the enforcement of post-employment restrictions in Executive Order 13989, “Ethics Commitments by Executive Branch Personnel” (the “Ethics Pledge”), or a successive Executive Order;
- Remove the procedures for formal administrative hearings to enforce post-employment restrictions, and replace them with informal actions that the NRC may consider in appropriate situations.

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For updates or revisions to policies contained in this MD that were issued after the MD was signed, please see the Yellow Announcement to Management Directive index ([YA-to-MD index](#)).

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## **I. POLICY**

Federal law (18 U.S.C. 207) places certain restrictions on post-employment activities of former Federal Government employees. The regulations implementing these restrictions are issued by the Office of Government Ethics and are codified in Title 5 of the *Code of Federal Regulations* (CFR) Part 2641. Former Presidential appointees or other former, NRC, non-career appointees may be subject to additional post-employment restrictions under Executive Order 13989, “Ethics Commitments by Executive Branch Personnel” (the “Ethics Pledge”), or a successor Executive Order. It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to ensure that all employees are aware of these restrictions before leaving Government service, report suspected violations to the appropriate authorities, and take appropriate action to prevent or avoid potential violations by former employees.

## **II. OBJECTIVES**

- Describe the post-employment restrictions governing the conduct of former employees after they separate from Government service.
- Provide guidelines for reporting possible violations to the Office of the Inspector General.
- Describe NRC management responsibilities for handling suspected violations and taking further action when appropriate.

## **III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY**

### **A. Inspector General (IG)**

1. Provides policy direction for and conducts, supervises, and coordinates audits, evaluations, inspections, and investigations relating to all NRC programs and operations.
2. Refers reports of investigation involving alleged violations of the post-employment restrictions to NRC management for possible, further action; refers criminal matters to the Department of Justice (DOJ) for prosecution or other appropriate action.

### **B. General Counsel**

1. Advises all employees, including the appropriate agency manager, as defined in this management directive (MD), whether a former employee has violated post-employment legal requirements and what, if any, further actions are appropriate under the circumstances.

2. May delegate the above responsibilities to deputy ethics officials in the Office of the General Counsel (OGC).

**C. Executive Director for Operations (EDO)**

1. Reviews the IG's relevant investigative reports and, in consultation with OGC, decides whether appropriate action should be taken with respect to a former employee who was last employed in an office or region that reported to the Commission through the EDO.
2. May delegate the decision to another appropriate agency manager, as defined in this MD.

**D. Director, Offices Reporting Directly to the Commission**

1. Reviews the IG's relevant investigative reports and, in consultation with OGC, decides whether appropriate action should be taken with respect to a former employee who was last employed in their office.
2. May delegate the decision to another appropriate agency manager, as defined in this MD.

**IV. APPLICABILITY**

The post-employment restrictions that are the subject of this MD are applicable to all former employees, including former special Government employees. The responsibility to report suspected violations applies to all employees.

**V. DIRECTIVE HANDBOOK**

Handbook 7.12 contains guidelines for reporting suspected violations and consideration of appropriate action in the event of a confirmed violation of the post-employment restrictions.

**VI. DEFINITIONS**

**Appropriate Agency Manager**

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

**Employee**

All NRC employees, including members of the Commission and the Inspector General, a special Government employee (unless otherwise indicated), or an employee of another Government agency assigned or detailed to the NRC for a period in excess of 30 calendar days.

### **Former Employee**

A person who previously served as an employee, as defined in “Employee” of this section.

### **Special Government Employee**

An 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, with temporary duties either on a full-time or intermittent basis. The term includes NRC consultants, experts, members of advisory committees, and summer interns.

## **VII. REFERENCES**

### ***Code of Federal Regulations***

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

### ***Executive Order (EO)***

E.O. 13989, “Ethics Commitments by Executive Branch Personnel” (Jan. 20, 2021) (the “Ethics Pledge”).

### ***United States Code***

5 U.S.C. Chapter 131, “Ethics in Government” (5 U.S.C. 13101-13146).

18 U.S.C. 207, “Restrictions on former officers, employees, and elected officials of the executive and legislative branches.”

18 U.S.C. 216, “Penalties and injunctions.”

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

<b>DH 7.12</b>	<b>ENFORCEMENT OF POST-EMPLOYMENT RESTRICTIONS</b>	<b>DT-23-21</b>
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## I. POST-EMPLOYMENT RESTRICTIONS

- A. United States Code (U.S.C.) Title 18, “Crimes and Criminal Procedure,” Section 207(a)(1) prohibits any former employee from knowingly making, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person in connection with a particular matter involving a specific party or parties, in which they participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest. This restriction, including certain exceptions, is described in more detail in the *Code of Federal Regulations* (CFR), Title 5, “Administrative Personnel,” section 2641.201.
- B. 18 U.S.C. 207(a)(2) prohibits any former supervisor, for 2 years after termination of service, from knowingly making, with intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person in connection with a particular matter involving a specific party or parties that were under that former supervisor’s official responsibility during the last year of service. This restriction, including certain exceptions, is described in more detail in 5 CFR 2641.202.
- C. 18 U.S.C. 207(c) prohibits any former “senior” employee, for 1 year after terminating service in a “senior” position, from knowingly making, with the intent to influence, any communication to or appearance before an employee of their former agency, if that communication or appearance is made on behalf of any other person in connection with any matter on which the former senior employee seeks official action by the agency. This restriction, including certain exceptions, is described in more detail in 5 CFR 2641.204. A “senior employee” for purposes of this restriction is defined in 5 CFR 2641.104 and, at the NRC, generally includes Presidential appointees and members of the Senior Executive Service.
- D. Presidential appointees who have signed the “Ethics Pledge” pursuant to Executive Order No. 13989, “Ethics Commitments by Executive Branch Personnel” (or a successor “Ethics Pledge” with comparable provisions), are subject to extended or additional post-employment restrictions than those described above.

## II. REPORTING OF POSSIBLE VIOLATION

- A. Any employee who receives information concerning a possible violation of the post-employment restrictions described above by a former employee should report the facts forming the basis for the possible violation to the Office of the Inspector General (OIG). If an employee is unsure whether certain conduct amounts to a violation of these restrictions, they are encouraged to discuss the matter with a deputy ethics official in the Office of the General Counsel (OGC).

- B.** The obligation to comply with the post-employment restrictions described in this handbook is on the former employee. Current employees do not violate the law or engage in wrongdoing by receiving a prohibited communication or appearance in the course of their official duties. However, employees should avoid facilitating potential violations where potentially prohibited conduct is known in advance. Thus, employees should consult with a deputy ethics official if they have reason to believe that a post-employment violation may occur (for example, if it is known that a recently separated employee plans to attend a public meeting on behalf of a new employer with respect to a particular matter on which they previously worked), so that the NRC staff can be appropriately advised in advance.

### **III. INVESTIGATION OF POSSIBLE VIOLATION**

- A.** The OIG will make an initial evaluation of the facts presented in the allegation and, if warranted, initiate an investigation. If the OIG determines a former employee has violated the post-employment restrictions, 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). The DOJ is empowered to criminally prosecute violations of 18 U.S.C. 207 or seek appropriate civil remedies, including the imposition of civil penalties or issuance of an injunction (18 U.S.C. 216). The Attorney General is also authorized to commence a civil action against a former employee who violates the post-employment provisions of the Ethics Pledge.
- B.** Any further investigation or action by the NRC must be coordinated with the DOJ to avoid prejudicing possible criminal or civil proceedings.
- C.** If the DOJ informs OIG that it does not intend to institute criminal or civil proceedings, the NRC will be free to pursue appropriate action. The OIG will provide a copy of the investigative report to the appropriate agency manager and send an information copy of the report to the General Counsel.

### **IV. CONSIDERATION OF APPROPRIATE ACTION**

- A.** The appropriate agency manager will review the IG report. If that official, in consultation with OGC, determines there is reasonable cause to believe that the former Government employee has violated any of the post-employment restrictions described in section I.A of this Handbook, the appropriate agency manager will decide whether to take appropriate action. This may include, but is not limited to—

  1. Seeking to avoid potential future violations by proactively communicating the NRC's position on the matter to the former employee,
  2. Instructing relevant NRC staff to not engage or communicate with the former employee with respect to a prohibited particular matter,

3. Determining whether any curative actions are necessary or desirable in the event the NRC has relied in part on a prohibited communication when making a regulatory decision, and
  4. Any other appropriate action under the circumstances.
- B.** Any actions or communications made to the former employee concerning post-employment obligations should be coordinated with OGC.