U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

TN: DT-93-21

To:	NRC Management Directives Custodians
Subject:	Transmittal of Management Directive 7.12, "Enforcement of Post-Employment Restrictions"
Purpose:	Directive and Handbook 7.12 replace NRC Appendix 4124, Part III (MD 10.98). The management directive makes minor modifications to the post-employment enforcement procedures and reflects organizational changes made since the appendix was issued. The remaining portions of Manual Chapter and Appendix 4124 have been superseded by the Office of Government Ethics regulations and should be discarded.
Office of Origin:	Office of the General Counsel
Contact:	Trip Rothschild, 415-1633
Date Approved:	June 25, 1993
Volume:	7 Legal and Ethical Guidelines
Directive:	7.12 "Enforcement of Post-Employment Restrictions"
Availability:	Rules and Directives Branch Office of Administration Michael T. Lesar, (301) 415-7163 Christy Moore, (301) 415-7086

Enforcement of Post-Employment Restrictions

Directive 7.12

(Formerly MC 4124, Part III)

Contents

Policy 1
Objectives 1
Organizational Responsibilities and Delegations of Authority 2
The Inspector General (IG) 2
The General Counsel 2
The Executive Director for Operations (EDO) 2
The Chief Administrative Judge, Atomic Safety and Licensing Board Panel (ASLBP) 3
The Commission 3
Applicability 3
Employees 3
Handbook 3
Definitions 4
References 4

Enforcement of Post-Employment Restrictions
Directive 7.12

Policy
(7.12-01)

It is the policy of the U.S. Nuclear Regulatory Commission (NRC), 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.

Objectives
(7.12-02)

- To provide guidelines for reporting possible violations. (021)
- To describe NRC management responsibilities in handling suspected violations. (022)
- To describe NRC procedures when administrative actions are necessary because violations are found to exist. (023)

Organizational Responsibilities and Delegations of Authority
(7.12-03)

The Inspector General (IG)
(031)

- Provides policy direction for and conducts, supervises, and coordinates audits, inspections, and investigations relating to all NRC programs and operations. (a)

- 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
(032)

- Provides advice to the appropriate agency manager whether a former employee has violated post-employment legal requirements. (a)

- Serves as legal representative for the NRC staff in any administrative proceeding. (b)

The Executive Director for Operations (EDO)
(033)

The EDO or other appropriate agency manager decides whether to institute an administrative proceeding against a former employee after reviewing the Inspector General's findings.

Organizational Responsibilities and Delegations of Authority
(7.12-03) (continued)

The Chief Administrative Judge, Atomic Safety and Licensing Board Panel (ASLBP)
(034)

Appoints a presiding officer to conduct administrative proceedings.

The Commission
(035)

Hears appeals of administrative decisions rendered by the presiding officer.

Applicability
(7.12-04)

Employees
(041)

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

Handbook
(7.12-05)

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

Definitions
(7.12-06)

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

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.

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.

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.

References
(7.12-07)

1. Ethics in Government Act of 1978, as amended (18 U.S.C. 207, 216).

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

3. "Subpoenas," 10 CFR 2.720(h).

Enforcement of Post-Employment Restrictions

Handbook

(Formerly Appendix 4124, Part III) 7.12

Contents

Procedures to Enforce Post-Employment Restrictions 1
Reporting of Possible Violation (A) 1
Investigation of Possible Violation (B) 1
Initiation of Administrative Proceedings (C) 2
Administrative Sanctions (D) 2
Notice (E) 2
Agency Management Decision (F) 3
Appointment or Disqualification of the Presiding Officer (G) 4
Hearing (H) 4
Appeal (I) 6
Implementation of Disciplinary Action (J) 6
Judicial Review (K) 6

Procedures to Enforce Post-Employment Restrictions

Reporting of Possible Violation (A)

Any person obtaining information of a possible violation by a former NRC employee of the post-employment restrictions set forth in the Ethics in Government Act of 1978 (18 U.S.C. 207), as amended, or the regulations promulgated thereunder by the Office of Government Ethics (5 CFR Parts 2637 and 2641) should report the facts forming the basis for the possible violation to the Office of the Inspector General (OIG). (1)

In brief, 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. Additional post-employment restrictions set forth in 18 U.S.C. 207 apply to former NRC supervisors. (2)

Investigation of Possible Violation (B)

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

Investigation of Possible Violation (B) (continued)

administrative action must be coordinated with the DOJ to avoid prejudicing possible criminal proceedings. (1)

If the DOJ informs the Commission that it does not intend to institute criminal 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. (2)

Initiation of Administrative Proceedings (C)

The appropriate agency manager will review the IG report. If that official, in consultation with the General Counsel, 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 General Counsel of the basis for that decision.

Administrative Sanctions (D)

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

Notice (E)

When the agency manager decides to institute a proceeding, that official will serve notice on the former employee of the intent to

Notice (E) (continued)

initiate administrative action. Such notice must be made by certified mail and must include—

- A statement of allegations and the basis for those allegations sufficiently detailed to enable the former Government employee to prepare an adequate defense. (1)

- A description of the proposed administrative sanction. (2)

- A copy of the statute and regulations alleged to be violated. (3)

- Notification of the right to request a hearing within 20 days of the date of the notification. (4)

- 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. (5)

- 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. (6)

Agency Management Decision (F)

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 (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.

Appointment or Disqualification of the Presiding Officer (G)

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.

Hearing (H)

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. (1)

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— (2)

- Adequate time to prepare a proper defense. (a)
- An expeditious resolution of the allegation(s). (b)

The parties shall have, at a minimum, the following rights at the hearing: (3)

- To represent oneself or to be represented by counsel. (a)
- To obtain discovery. (b)

Hearing (H) (continued)

- 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. (c)

- 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 2.720 (h). (d)

- To confront and to cross-examine adverse witnesses, whose testimony will be presented under oath or affirmation administered by the presiding officer. (e)

- To present oral argument. (f)

- To receive a transcript or recording of the proceedings on request. (g)

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. (4)

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. (5)

Appeal (I)

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. (1)

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. (2)

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. (3)

Implementation of Disciplinary Action (J)

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.

Judicial Review (K)

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.