

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

MD 7.10	POLITICAL ACTIVITY	DT-16-34
<i>Volume 7:</i>	Legal and Ethical Guidelines	
<i>Approved By:</i>	Stephen G. Burns, Chairman	
<i>Date Approved:</i>	September 6, 2016	
<i>Expiration Date:</i>	September 6, 2021	
<i>Issuing Office:</i>	Office of the General Counsel	
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EXECUTIVE SUMMARY		
<p>Management Directive (MD) 7.10 informs the U.S. Nuclear Regulatory Commission staff about the Hatch Act and corresponding regulations issued by the Office of Personnel Management (OPM) which may restrict participation in certain political activities. The MD is revised to remove an outdated 2005 booklet published by the Office of Special Counsel (OSC) and provide updated guidance from OSC.</p>		

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I. POLICY

A. Employee Awareness

It is the policy of the U.S. Nuclear Regulatory Commission to ensure that all employees are aware of and follow established laws and regulations concerning political activities specified in this directive and handbook.

B. NRC Employees' Participation in Political Activity

1. The Hatch Act is the law that restricts the involvement of Federal employees in certain political activities. Specifically, the law limits Federal employees' activities in connection with partisan elections. "Partisan" means elections where candidates run as representatives of political parties.
2. The Hatch Act does not limit Federal employees in nonpartisan activities. It also does not restrict employees' ability to express their opinions about candidates or issues and campaign for or against referendum questions, constitutional amendments, or ordinances. However, these activities must be on employees' own time with no use of their title or position or Government resources.
3. Employees are not allowed to engage in any partisan political activity—
 - (a) While on duty,
 - (b) In any Government office or building, or
 - (c) While using a Government vehicle or wearing a Government uniform or official insignia.
4. Employees are also not allowed to—
 - (a) Be a candidate for partisan political office;
 - (b) Solicit, accept, or receive political contributions in connection with a partisan election;

- (c) Use their official authority or influence to affect the outcome of an election;
- (d) Solicit or discourage the political activity of a person with business before the NRC (e.g., licensee, applicants, contractors, etc.)

II. OBJECTIVES

- Inform and advise employees of permitted and prohibited political activities.
- Establish procedures for handling violations of political activity restrictions.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Inspector General

1. Refers alleged violations of political activity laws and regulations to the U.S. Office of Special Counsel (OSC).
2. Provides coordination and liaison with the OSC and the Department of Justice, as required, on application of the laws and regulations concerning prohibited political activity.

B. General Counsel

Advises the Commission on the laws and regulations concerning political activity and designates the Assistant General Counsel for Legal Counsel, Legislation, and Special Projects to assign attorneys to provide such advice to employees.

C. Deputy Ethics Counselors (Headquarters) (Division of Legal Counsel, Legislation, and Special Projects, OGC)

1. Issue NRC-wide instructions, conducts training, and obtains and distributes guidance on political activity restrictions.
2. Advise individual NRC employees on matters concerning political activity.

D. Deputy Ethics Counselors (Regional Counsels)

Advise employees in their respective regions on matters relating to political activity, in coordination with headquarters deputy ethics counselors.

E. Commissioners, Office Directors, and Regional Administrators

1. Ensure that employees within their respective offices or regions are clearly informed about permitted and prohibited activities.
2. Assist employees in obtaining information or rulings on questions they may have about contemplated political activities.

3. Report any allegations or indications of prohibited political activity by NRC employees to the Office of the Inspector General.

IV. DEFINITIONS

Employee

An NRC employee, a member of the Commission, or an employee of another Government agency assigned or detailed to the NRC.

On Duty

The time period when an employee is in a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay). An employee who is teleworking is considered on duty.

Political Activity

Any activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

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.

V. APPLICABILITY

The provisions of this directive and handbook apply to and must be followed by all NRC employees, including those under letter of appointment, with the following exceptions:

A. The Commission

The Chairman and members of the Commission may engage in political activity while on duty, on NRC property, or in an NRC vehicle if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

B. Contractors

Persons retained to perform services on a fee basis who take no oath of office are not subject to the political activity restrictions. However, these persons, such as contractors, cannot engage in political activities while on Government property or while they are performing services for the Government.

C. Special Government Employees

These employees are only subject to the political activity restrictions while they are on duty.

VI. HANDBOOK**A. Handbook 7.10**

Handbook 7.10 provides specific guidance to NRC employees on the various restrictions concerning their political activity, including prohibitions applicable only while on duty or in the Federal workplace and prohibitions from certain types of activity applicable at all times, regardless of duty status (see Section I.C, “24/7 Prohibitions,” of this handbook); differentiates between prohibitions applicable to all NRC employees and those applicable only to career members of the Senior Executive Service; provides examples of permitted types of activity; and describes the procedures for investigations of suspected Hatch Act violations and the range of punishments for substantiated violations.

B. Employees With Additional Questions

Employees with additional questions should consult a deputy ethics counselor. Employees also may obtain an advisory opinion from the U.S. Office of Special Counsel by submitting their questions in writing to 1730 M Street, NW, Suite 218, Washington, DC 20036-4505 or by e-mail at Hatchact@osc.gov.

VII. REFERENCES***Code of Federal Regulations***

5 CFR Part 733, “Political Activity—Federal Employees Residing in Designated Localities.”

5 CFR Part 734, “Political Activities of Federal Employees.”

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

U.S. Office of Special Counsel

U.S. Office of Special Counsel’s Hatch Act Web Site:

<https://osc.gov/Pages/HatchAct.aspx>.

U.S. Office of Special Counsel Hatch Act Advisory Opinions:

<https://osc.gov/pages/advisory-opinions.aspx>.

United States Code

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011, et seq.).

Inspector General Act of 1978 (5 U.S.C. App.).

Prohibited Personnel Practices (5 U.S.C. 2302).

Appointment of Administrative Law Judges (5 U.S.C. 3105).

Political Activities (5 U.S.C. 73 Subchapter III).

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I. PROHIBITED ACTIVITIES

A. Introduction

1. The Hatch Act is a Federal law that limits the partisan political activities of all civilian employees in the executive branch (excluding the President and Vice President). The Hatch Act does not prohibit any political activity that is nonpartisan in nature, including an activity in connection with general political issues that are not linked to specific political parties, groups, or candidates.
2. The Hatch Act divides all Federal employees into two categories: “lesser restricted” employees and “further restricted” employees. At the NRC, career members of the Senior Executive Service (Career SES) are “further restricted” employees. All other employees, including Special Government employees, are considered “lesser restricted” employees.
3. The prohibitions in Sections I.B and I.C of this handbook apply to all NRC employees (i.e., both “lesser restricted” and “further restricted” employees). Only Career SES employees (i.e., “further restricted” employees) are subject to the additional prohibitions in Section I.D. of this handbook.

B. “On Duty/In the Workplace” Prohibitions

1. All NRC employees, including Career SES employees, are prohibited from engaging in “political activity” while—
 - (a) On duty;
 - (b) In a Government room or building, including non-business areas such as a cafeteria or gym (i.e., the “Federal workplace”);
 - (c) While wearing an NRC “uniform” or insignia; or
 - (d) While using a government vehicle.
2. “Political activity” is defined in 5 CFR 734.101 as any “activity directed toward the success or failure of a partisan candidate, political party, or partisan political group.” Examples of prohibited political activity that fall within this prohibition include, but are not limited to the following:
 - (a) Wearing partisan buttons, hats, or clothing that bear the name, picture, or slogan of candidates for partisan political office or a political party (although employees may park their personal vehicle which displays a political bumper sticker in the NRC parking garage);
 - (b) Displaying screen savers, posters, news articles, campaign logos, or photographs of partisan political candidates or political parties;

- (c) Forwarding partisan e-mails, even if they are being shared with other like-minded employees;
 - (d) Making political contributions while at work;
 - (e) Using NRC resources including e-mail, telephones, copiers, or other property for partisan political purposes; or
 - (f) Engaging in political activity on a personal social media account or a personal blog while on duty or in the Federal workplace, including while teleworking, regardless of whether the activity is done from a personal device. Employees who engage in political activity on personal social media accounts should read the most recent Office of Special Counsel (OSC) guidance to ensure compliance with the Hatch Act, available at <https://osc.gov/News/pr15-23.pdf>.
3. **Note:** Commissioners may engage in political activity while on duty, in the Federal workplace, or in an NRC vehicle if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

C. “24/7” Prohibitions

All NRC employees, including Career SES employees, are subject to the following prohibitions at all times, regardless of whether they are on duty or in the Federal workplace. Employees who reside in a municipality or political subdivision listed in 5 CFR 733.107, “Designated Localities,” may be exempt from some of these restrictions as applied to local partisan elections within those municipalities or political subdivisions, and should seek advice from a deputy ethics counselor with specific questions regarding these exemptions. **Note:** Special Government employees are subject to these prohibitions but only while they are on duty. NRC employees may not—

1. Use their official authority or influence to affect the outcome of an election. Examples of prohibited activities include, but are not limited to the following:
 - (a) Using one’s official NRC title while participating in political activity while off duty;
 - (b) Using one’s authority to solicit or coerce any person to participate in political activity, including a subordinate;
 - (c) Using non-public agency information for political purposes; and
 - (d) Involving a subordinate employee in any way in a supervisor’s political activity.
2. Knowingly solicit, accept, or receive a political contribution (i.e., fundraising). Examples of activity within the scope of this prohibition include, but are not limited to the following:
 - (a) Asking for donations to a political party, political group, or political candidate or campaign, whether by mail, e-mail, in person or over the phone;

- (b) Hosting a political fundraiser or inviting others to a fundraiser;
 - (c) Working a phone bank if the employee is asking for contributions;
 - (d) Forwarding political e-mails that include a "Donate" button or link, even from a personal account, or "sharing" or "liking" political fundraising content on social media if the activity is visible to the employee's social media connections.
 - (e) **Note:** Employees who are members of the National Treasury Employees Union (NTEU) may solicit other union members for contributions to the NTEU political action committee provided they are not soliciting subordinates and the solicitation occurs while off duty and outside the Federal workplace.
3. Serve as a candidate in a partisan election; or
 4. Knowingly solicit or discourage the political activity of a person with business before the NRC (e.g., licensees, applicants, contractors, etc.).

D. Additional Restrictions for Career SES Employees ("Further Restricted" Employees)

1. In addition to the restrictions in Sections I.B and I.C above, Career SES employees may not take an active part in partisan political management or partisan political campaigning. Examples of activity within the scope of this prohibition include, but are not limited to the following:
 - (a) Volunteering for a partisan campaign;
 - (b) Distributing campaign literature on behalf of a political party, group, or partisan candidate, including by e-mail or social media;
 - (c) Participating in a partisan voter registration drive;
 - (d) Holding office in a political club or party;
 - (e) Making a campaign speech or otherwise campaigning for or against candidates in partisan elections; or
 - (f) Participating in any other political activity that is performed in concert with a political party, partisan political group, or candidate for partisan political office.
2. **Note:** "Administrative law judges" are subject to these additional restrictions under the Hatch Act, but only those appointed pursuant to 5 U.S.C. 3105. It does not include members of the Atomic Safety and Licensing Board appointed in accordance with Section 191 of the Atomic Energy Act.

II. PERMITTED ACTIVITIES

- A.** An NRC employee may take an active part in any political activity that is not otherwise prohibited by the Hatch Act restrictions above. Examples of permitted activities include, but are not limited to the following:
1. Registering and voting;
 2. Making personal contributions to political candidates or organizations;
 3. Expressing personal opinions about candidates and issues;
 4. Signing nominating petitions;
 5. Joining political clubs;
 6. Attending political rallies, meetings, and fundraisers;
 7. Being candidates in non-partisan elections; and
 8. Campaigning for or against non-partisan referendum questions, constitutional amendments, or municipal ordinances.
- B.** Examples of permissible activity by “lesser restricted” employees on their personal time, but not “further restricted” employees (i.e., Career SES) include but are not limited to the following:
1. Assisting in voter registration drives or otherwise assisting voters on behalf of a partisan candidate;
 2. Campaigning for or against candidates, such as distributing campaign literature on their behalf or managing volunteers;
 3. Helping organize fundraisers (without soliciting, accepting, or receiving contributions); and
 4. Initiating or circulating nominating petitions for a partisan candidate.

III. VIOLATIONS OF THE HATCH ACT

A. Reporting Violations

An NRC employee may seek advice from deputy ethics counselors on whether a proposed activity would constitute a violation of the Hatch Act. An NRC employee may report suspected violations of political activity laws and regulations to the Office of the Inspector General (OIG), which will coordinate and refer suspected Hatch Act violations to the U.S. Office of Special Counsel (OSC), the independent Federal agency with authority to prosecute such violations. An NRC employee also has the option to report suspected violations of the Hatch Act directly to the OSC at <https://osc.gov/Pages/HatchAct-HowToFile.aspx>.

B. Authority to Investigate

The OSC independently investigates alleged Hatch Act violations. If the OSC determines that a violation has occurred and warrants prosecution, it may file a written complaint for disciplinary action with the U.S. Merit Systems Protection Board (MSPB).

C. Penalties

Final determinations on whether a Hatch Act violation has occurred are made by the MSPB. Penalties for violations may include the following:

1. Suspension or reprimand,
2. Assessment of a civil penalty not to exceed \$1,000,
3. Reduction in grade,
4. Debarment from Federal employment for a period not to exceed 5 years, and
5. Removal from Federal service.