

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

MD 7.8	OUTSIDE EMPLOYMENT	DT-16-47
<i>Volume 7:</i>	Legal and Ethical Guidelines	
<i>Approved By:</i>	Stephen G. Burns, Chairman	
<i>Date Approved:</i>	December 12, 2016	
<i>Expiration Date:</i>	December 12, 2021	
<i>Issuing Office:</i>	Office of the General Counsel	
<i>Contact Name:</i>	Eric Michel	

EXECUTIVE SUMMARY

Management Directive 7.8, “Outside Employment,” provides the policies and procedures required for the approval of certain compensated outside employment. This revision—

- Changes the authorizing official from the Executive Director for Operations (EDO) to the office director or regional administrator for requests made by an employee of an office reporting to the EDO.
- Clarifies that an employee must first consult with and receive concurrence from a deputy ethics counselor in the Office of the General Counsel (OGC) or regional counsel before requesting approval from an authorizing official.
- Discusses the standards by which a request for approval of outside employment will be evaluated.
- Updates the sample memorandum that an employee should use when transmitting a request to an authorizing official.

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I. POLICY

In accordance with the U.S. Nuclear Regulatory Commission’s supplemental ethics regulation, 5 CFR 5801.103, NRC employees are required to receive written approval before engaging in certain compensated outside employment. Employees may engage in outside employment not covered by this directive without obtaining prior NRC approval.

II. OBJECTIVES

- Inform employees of outside employment that may be incompatible with their NRC employment.
- Inform employees when prior approval to engage in certain compensated outside employment is required.
- Inform employees of the NRC officials who are authorized to grant approvals necessary for employees to engage in certain compensated outside employment.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. The Chairman

1. Authorizes outside employment for employees on his or her personal staff, for the EDO, and for directors of offices reporting to the Chairman or the Commission.
2. Designates the General Counsel (GC) as the Designated Agency Ethics Official (DAEO).

B. The Commission

Authorizes outside employment for employees on their personal staff.

C. Inspector General (IG)

Authorizes outside employment for employees of the Office of the Inspector General (OIG).

D. General Counsel (GC)

1. Serves as the NRC DAEO, appointed by the Chairman, to manage and oversee the agency's ethics program.
2. Designates office directors and regional administrators as authorizing officials for outside employment requests made by employees in their respective offices and regions. See memorandum from Margaret M. Doane, General Counsel, designating outside employment authorizing officials, September 20, 2016 ([ML16265A420](#)).
3. Advises the Chairman, Commission, EDO, and office directors on requests for approval of outside employment. May delegate this authority to deputy ethics counselors in the Division of Legal Counsel, Legislation, and Special Projects, OGC.

E. Executive Director for Operations

1. Authorizes outside employment for employees in his or her office, for the regional administrators, and for the office directors who report to the EDO.
2. Concurs on authorizations for outside employment granted by regional administrators and office directors who report to the EDO.
3. May delegate this authority to the Deputy Executive Directors for Operations or the Assistant for Operations.

F. Office Directors and Regional Administrators

1. As designated by the DAEO, authorize outside employment for employees in their respective offices or regions. Regional administrators and office directors who report to the EDO must obtain concurrence from the EDO before providing final authorization.
2. May delegate this authority to a deputy director or deputy regional administrator.

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

1. Advise the Chairman, Commission, office directors, regional administrators, and individual employees, as necessary, on requests for approval of outside employment and whether such outside employment would violate a Federal statute or regulation.
2. Concur on requests for approval of outside employment before such requests are submitted to an authorizing official.

H. Deputy Ethics Counselors (Regional Counsels)

1. Advise employees in their respective regions on matters relating to requests for approval of outside employment, in consultation with deputy ethics counselors at NRC headquarters.
2. Concur on requests for approval of outside employment before such requests are submitted to an authorizing official.

IV. APPLICABILITY

This directive applies to all current NRC employees, except special Government employees.

V. HANDBOOK

Detailed descriptions of the types of compensated outside employment that require prior approval and the procedures for obtaining this approval are contained in Handbook 7.8.

VI. DEFINITIONS**Employee**

An NRC employee or an employee of another Government agency assigned or detailed to the NRC for more than 30 days. Unless specifically stated otherwise in MD 7.8, the term does not include special Government employees.

Outside Employment

Any form of non-Federal employment, business relationship, or activity involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker.

Special Government Employee

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

VII. REFERENCES

Code of Federal Regulations

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

5 CFR 2635.802, "Conflicting Outside Employment and Activities."

5 CFR 2635.807, "Teaching, Speaking and Writing."

5 CFR 5801.103, "Prior Approval for Outside Employment."

Nuclear Regulatory Commission Documents

Management Directives—

7.3, "Participation in Professional Organizations."

7.9, "Ethics Approvals and Waivers."

NRC Ethics Web Site:

<http://drupal.nrc.gov/ogc/nrc-ethics>.

Memorandum to Margaret M. Doane, General Counsel, from Chairman Allison M. Macfarlane, "Designation as Agency Ethics Official," November 5, 2012.

Memorandum to Those on the Attached List from Margaret M. Doane, General Counsel, "Memorandum Designating 'Outside Employment' Authorizing Officials," September 20, 2016 ([ML16265A420](#)).

United States Constitution

Article I, Section 9, Clause 8, "Emoluments Clause."

United States Code

Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government (18 U.S.C. 205).

Acts Affecting a Personal Financial Interest (18 U.S.C. 208).

Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government (18 U.S.C. 203).

Salary of Government Officials and Employees Payable Only by United States (18 U.S.C. 209).

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

DH 7.8	OUTSIDE EMPLOYMENT	DT-16-47
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<ul style="list-style-type: none">• Changes the authorizing official from the Executive Director for Operations (EDO) to the office director or regional administrator for requests made by an employee of an office reporting to the EDO.• Clarifies that an employee must first consult with and receive concurrence from a deputy ethics counselor in the Office of the General Counsel (OGC) or regional counsel before requesting approval from an authorizing official.• Discusses the standards by which a request for approval of outside employment will be evaluated.• Updates the sample memorandum that an employee should use when transmitting a request to an authorizing official.		

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I. OUTSIDE EMPLOYMENT

A. Introduction

1. The Governmentwide “Standards of Ethical Conduct for Employees of the Executive Branch” in 5 CFR Part 2635 prohibits agency employees from engaging in outside employment that conflicts with their official duties. The NRC has promulgated its own supplemental agency-specific ethics regulation, with the concurrence of the Office of Government Ethics (OGE), which requires that NRC employees (other than special Government employees) receive written approval before engaging in certain compensated outside employment. This handbook identifies those with authority to grant these approvals and describes in greater detail the outside employment activities that require approval and the procedures for obtaining this approval.
2. The requirement to obtain prior written approval applies only to employees who engage in compensated outside employment concurrent with their NRC employment. The approval requirement described in Section I.A.1 of this handbook does not apply to employees who are leaving the NRC for another employer.
3. While NRC special Government employees are not required to receive prior approval before engaging in compensated outside employment, special Government employees are reminded that their outside activities may still be governed by various ethics requirements (including, but not limited to, Federal criminal conflict of interest statutes, the Standards of Ethical Conduct for Employees of the Executive Branch in 5 CFR Part 2635, and the Emoluments Clause of the U.S. Constitution). Special Government employees with questions about these various ethics requirements should contact a deputy ethics counselor.

B. Requirements for Outside Employment

1. “Outside employment” is defined as any form of non-Federal employment, business relationship or activity, involving the provision of personal services by the employee.
2. In accordance with 5 CFR 5801.103, “Prior Approval for Outside Employment,” NRC employees, other than special Government employees, are required to obtain prior written approval before engaging in compensated outside employment with entities regulated by or having business with the Commission. Specifically, these entities include the following:
 - (a) A Commission licensee,
 - (b) An applicant for a Commission license,
 - (c) An organization directly engaged in activities in the commercial nuclear field,
 - (d) A Commission contractor,
 - (e) A Commission supplier,

- (f) An applicant for or holder of a license issued by a State pursuant to an agreement between the Commission and the State,
 - (g) A trade association that represents clients concerning nuclear matters, and
 - (h) A law firm or other organization that is participating in an NRC proceeding or that regularly represents itself or clients before the NRC.
3. The requirement to obtain prior written approval is only necessary before actually engaging in outside employment with one of the entities listed in Section I.B.2. However, employees are also reminded that they must comply with any recusal obligations that may arise once they have begun “seeking” or “negotiating for” employment with such an entity. These recusal obligations derive from 18 U.S.C. 208, “Acts Affecting a Personal Financial Interest,” and Subpart F of 5 CFR 2635, “Seeking Other Employment.” Additionally, engaging in uncompensated outside activity with entities listed in Section I.B.2, while not requiring prior written approval, can raise ethical issues as well. Employees with questions concerning these restrictions should contact a deputy ethics counselor at Ethics.Resource@nrc.gov, their regional counsel, or the NRC Ethics Web site at <http://drupal.nrc.gov/oqc/nrc-ethics>.

C. Approval of Outside Employment

1. An employee seeking prior written approval to engage in outside employment with an entity listed in Section I.B of this handbook must first consult with a deputy ethics counselor. The employee must provide the deputy ethics counselor with sufficient information to make an initial determination that the proposed employment would not violate a Federal statute or regulation. At minimum, this information includes the name and address of the prospective employer, a detailed description of the employee’s present NRC duties, and a detailed description of the specific duties or services to be performed in the course of the proposed outside employment. A deputy ethics counselor may request additional information, as necessary.
2. If the deputy ethics counselor determines that the proposed outside employment would violate a Federal statute or regulation, the request cannot be approved, and the deputy ethics counselor will provide a denial in writing. Statutes and regulations relevant to this determination include, but are not limited to, the following:
 - (a) 18 U.S.C. 203, prohibiting Government employees from receiving or sharing in compensation for the representation of a party before another Federal agency or court in a matter in which the United States is a party or has a direct and substantial interest.
 - (b) 18 U.S.C. 205, prohibiting Government employees from prosecuting a claim against the United States or representing another party before another Federal agency on a matter in which the United States is a party or has a direct and substantial interest.

- (c) 18 U.S.C. 209, prohibiting Government employees from receiving compensation or a supplementation of salary from anyone other than the Federal Government for the performance of their official duties.
 - (d) 5 CFR 2635.802, prohibiting employees from engaging in outside activities that would have the effect of requiring the employee's recusal from NRC matters so central or critical to the performance of official duties that the employee's ability to perform his or her position would be materially impaired.
 - (e) 5 CFR 2635.807, prohibiting agency employees from receiving compensation for "teaching, speaking or writing that relates to employee's official duties" unless an exception applies.
 - (f) Article 1, Section 9, Clause 8 of the United States Constitution (the Emoluments Clause), prohibiting Federal employees (including certain special Government employees) from receiving compensation from a foreign Government or a political subdivision of a foreign Government.
3. If the reviewing deputy ethics counselor determines that the proposed employment would not violate a Federal statute or regulation, the ethics counselor should also determine whether the proposed employment would create a reasonable appearance of a conflict of interest, misuse of position, or a lack of impartiality in agency decisionmaking or operations. The avoidance of creating even the appearance of a violation of ethical standards is a general principle and basic obligation of public service. The creation of an impermissible appearance may also be grounds for denial of the request, which the deputy ethics counselor will provide in writing.
4. If the deputy ethics counselor determines that the proposed outside employment would not violate a Federal statute or regulation and would not result in a reasonable appearance of impropriety, the deputy ethics counselor should convey this determination in writing to the requesting employee, and the requesting employee should then complete the sample memorandum in Exhibit 1 to be submitted to the appropriate authorizing official.
- (a) The concurrence for the memorandum must include, at minimum, the employee's immediate supervisor, who is familiar with the employee's current and anticipated duties, and the deputy ethics counselor who made the determination. Others may be added to the concurrence as deemed necessary.
 - (b) If the deputy ethics counselor has identified any necessary conditions the employee must follow in order to avoid violating a Federal statute or regulation or creating an impermissible appearance of impropriety, those conditions, must be included in the memorandum.
 - (c) While regional counsels may make this determination for employees within their respective regions, to help ensure consistency throughout the regions, they must consult with a headquarters deputy ethics counselor.

5. The authorizing officials are as follows:
 - (a) The Chairman authorizes outside employment for the EDO and office directors who report to the Chairman.
 - (b) Commissioners, including the Chairman, authorize outside employment for employees on their personal staff.
 - (c) The Inspector General authorizes outside employment for employees within the Office of the Inspector General.
 - (d) The EDO authorizes outside employment for employees within the office of the EDO, regional administrators, and office directors who report to the Commission through the EDO.
 - (e) Office directors and regional administrators authorize outside employment for employees in their respective offices and regions.
6. Authorizing officials may consult with anyone at the agency, including a different authorizing official. For offices who report to the Commission through the EDO, the authorizing official must receive concurrence from the EDO. The authorizing official retains sole and final discretion to approve the outside employment. The authorizing official may, for example, choose to not approve a request because, notwithstanding the determination that the employment is legally permissible, approval would nonetheless result in the appearance of an inappropriate relationship between the agency and the employer. The authorizing official may request more information if necessary to make an approval determination. The authorizing official shall approve or deny the request in writing, which may be done by e-mail.
7. Unless there are specific circumstances in an individual case that would warrant otherwise, an employee ordinarily should be authorized to serve as an instructor at an academic institution, provided that:
 - (a) The proposed employment does not “relate to the employee’s official duties” as that term is defined in 5 CFR 2635.807; or
 - (b) The proposed employment qualifies for the teaching exception in 5 CFR 2635.807(a)(3).

Exhibits**Exhibit 1 Sample Employee Request for Outside Employment**

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555**

MEMORANDUM TO: [OFFICE DIRECTOR OR REGIONAL ADMINISTRATOR]

FROM: [EMPLOYEE]

SUBJECT: REQUEST FOR APPROVAL TO ENGAGE IN OUTSIDE
EMPLOYMENT

Per the NRC's supplemental ethics regulation (5 C.F.R. 5801.103), I am requesting your authorization to engage in compensated outside employment. I am providing the following information:

1. [SUMMARY OF EMPLOYEE'S NRC DUTIES]
2. The employer is [NAME AND ADDRESS OF PROSPECTIVE EMPLOYER]. Prior approval is required because [NAME] is [SELECT APPROPRIATE CATEGORY FROM LIST IN 5 CFR 5801.103(a)]
3. [DETAILED DESCRIPTION OF PROPOSED OUTSIDE EMPLOYMENT ACTIVITIES, INCLUDING ESTIMATED TIME COMMITMENT AND WHETHER ACTIVITY WILL BE DONE SOLELY OUTSIDE REGULAR DUTY HOURS OR IF LEAVE WILL BE TAKEN]
4. [DESCRIPTION OF AMOUNT OF COMPENSATION AND THE METHOD/BASIS FOR COMPENSATION (E.G., SALARY, HOURLY FEE, ONE-TIME LUMP SUM)]
5. I have consulted with a deputy ethics official in the Office of the General Counsel [or regional counsel] who has determined that, if approved, this outside employment would not violate a Federal statute or regulation or result in an improper appearance of a conflict of interest [(INSERT IF APPLICABLE), subject to the following conditions, by which I will abide: (CONDITIONS TO BE INSERTED BY DEPUTY ETHICS COUNSELOR)]
6. I do not have any current or anticipated official NRC duties involving [EMPLOYER NAME] or that will directly and predictably affect [EMPLOYER NAME]'s financial interests, and my immediate supervisor has concurred in this determination. I understand that I must disqualify

myself from participating in any NRC matters involving [EMPLOYER] for the duration of my employment, and that I may have limited ability to work on NRC matters involving [EMPLOYER] even up to one year after terminating employment.

7. I understand that, if approved, all work performed on behalf of [EMPLOYER NAME] must be done on my own time. I will not use Government time, resources, or any non-public information that I have access to by nature of my Federal employment in furtherance of my outside employment.
8. I understand that approval to engage in this outside employment, if granted, may be revoked if such employment results in a significant impairment of my ability to perform the official duties of my position. I understand that, upon a significant change in the nature of the outside employment or my NRC official duties, this approval may need to be revised or revoked, and I will promptly consult with a deputy ethics counselor upon such a change in circumstances.

OFFICE			
NAME	[Ethics Counselor]	[Supervisor]	[Office Director/RA]*
DATE	mm/dd/yy	mm/dd/yy	mm/dd/yy

*NOTE: Regional administrators and office directors who report to the EDO must also obtain concurrence from the EDO before approving or denying an outside employment request.