

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

MD 7.10	POLITICAL ACTIVITY	DT-24-14
<i>Volume 7:</i>	Legal and Ethical Guidelines	
<i>Approved By:</i>	Brooke Clark, General Counsel Office of the General Counsel	
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<i>Issuing Office:</i>	Office of the General Counsel	
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EXECUTIVE SUMMARY		
<p>Management Directive (MD) 7.10, “Political Activity,” is revised to—</p> <ul style="list-style-type: none"> • Clarify organizational responsibilities and delegations of authority for issuing Hatch Act guidance and making referrals, • Update hyperlinks to the most recent Office of Special Counsel guidance, and • Provide additional information on where U.S. Nuclear Regulatory Commission (NRC) employees can seek and obtain Hatch Act opinions and guidance. <p>In addition, the NRC has revised this MD as part of its efforts to use more inclusive language in its publications. These changes, which include changing “Chairman” to “Chair” in some instances, are purely editorial and do not affect the meaning of the guidance in this document.</p>		

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I. POLICY

A. Employee Awareness

It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to ensure that all employees are aware of and follow established laws and regulations that govern certain kinds of “political activity” while on or off duty or in the Federal workplace, as specified in this management directive (MD).

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. The law’s purposes are to ensure that federal programs are administered in a nonpartisan fashion, to protect federal employees from political coercion in the workplace, and to ensure that federal employees are advanced based on merit and not based on political affiliation.

2. The Hatch Act does not restrict Federal employees from participating in nonpartisan activities, including those of civic, community, social, labor, or professional organizations. 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. The Hatch Act prohibits employees from engaging 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. The Hatch Act also prohibits employees from—
 - (a) Being a candidate for partisan political office;
 - (b) Soliciting, accepting, or receiving political contributions in connection with a partisan election;
 - (c) Using their official authority or influence to affect the outcome of an election; and
 - (d) Soliciting or discouraging the political activity of a person with business before the NRC (e.g., licensees, applicants, contractors).

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. Chair

Appoints a Designated Agency Ethics Official (DAEO) within the Office of the General Counsel in accordance with *Code of Federal Regulations* Title 5, Part 2638.104, “Government ethics responsibilities of agency ethics officials.”

B. 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.

C. Designated Agency Ethics Official (OGC)

1. Issues NRC-wide instructions, conducts training, and obtains and distributes guidance on political activity restrictions.

2. Advises individual NRC employees on matters concerning prohibited political activity.
3. May delegate these responsibilities to individual deputy ethics officials within OGC and regional offices.

D. Deputy Ethics Officials, Office of the General Counsel (OGC)

1. As delegated by the DAEO, advise individual NRC employees on matters concerning prohibited political activity.
2. Refer alleged violations of the Hatch Act to the Inspector General.

E. Deputy Ethics Officials (Regional Counsels)

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

F. Commissioners, Office Directors, and Regional Administrators

1. Ensure that employees within their respective offices or regions are clearly informed about permitted and prohibited activities and, as necessary, assist employees in obtaining information regarding the Hatch Act.
2. Refer alleged violations of the Hatch Act 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 period when an employee is in a pay status, regardless of location (e.g., inoffice, teleworking, or on official travel) other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay).

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 MD apply to and must be followed by all NRC employees, including those under letter of appointment, with the following exceptions.

A. The Commission

The Chair 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. All other Hatch Act restrictions apply to the Commission to the same extent as other NRC employees.

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

Special Government Employees are only subject to political activity restrictions while they are on duty.

VI. DIRECTIVE HANDBOOK

Directive 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.

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."

5 CFR Part 2638.104, "Government Ethics Responsibilities of Agency Ethics Officials."

NRC's Ethics Gateway system: <https://nrc.appiancloud.com>.

United States Code

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

Inspector General Act of 1978 (5 U.S.C. 401-424).

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

U.S. Office of Special Counsel

U.S. Office of Special Counsel Hatch Act Advisory Opinions:
<https://osc.gov/Services/Pages/HatchAct-AdvisoryOpinion.aspx>.

U.S. Office of Special Counsel's Hatch Act Web Site:
<https://osc.gov/Services/Pages/HatchAct.aspx>.

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I. PROHIBITED ACTIVITIES

A. Introduction

1. The Hatch Act is a Federal law that ensures that federal programs are administered in a nonpartisan fashion, protects federal employees from political coercion in the workplace, and ensures that federal employees are advanced based on merit and not based on political affiliation. The Act 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, which are referred to in this Handbook as “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. “Political activity” is defined in 5 CFR 734.101 as any “activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”
2. 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 clothing or insignia that identifies them as an NRC employee; or
 - (d) While using a Government vehicle.
3. Examples of prohibited political activity that fall within this prohibition include:
- (a) Wearing partisan buttons, hats, or clothing that bear the name, picture, or slogan of candidates for partisan political office or a political party;
 - (b) Displaying a partisan political bumper sticker on a personal vehicle that is used for official business on a recurrent basis, or if the vehicle is clearly identified as being on official business, such as parking in an NRC-designated space at a licensee facility (Note: This does not prohibit employees from parking a personal vehicle that displays a partisan political bumper sticker in the parking lot or garage at NRC-leased office space. However, employees parking a personal vehicle in an NRC lot or garage must not display partisan political materials in such a way that makes the vehicle appear to be a campaign mobile.);
 - (c) Displaying screen savers, posters, news articles, campaign logos, or photographs of partisan political candidates or political parties;
 - (d) Forwarding partisan e-mails, even if they are being shared with other like-minded employees;
 - (e) Making political contributions while on duty or in the Federal workplace;
 - (f) Using NRC resources including e-mail, telephones, copiers, or other property for partisan political purposes; or
 - (g) 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 consult guidance published by the Office of Special Counsel (OSC) on permitted and not permitted use of social media, available on the [Ethics SharePoint site](#).
4. **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

1. All NRC employees, including Career SES employees, are always subject to the following prohibitions, regardless of whether they are on duty or in the Federal workplace. NRC employees may not—
- (a) Use their official authority or influence to affect the outcome of an election.
Examples of prohibited activities include:

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- (i) Using one's official NRC title while participating in political activity while off duty;
 - (ii) Using one's authority to solicit or coerce any person to participate in political activity, including a subordinate;
 - (iii) Using non-public agency information for political purposes; and
 - (iv) Involving a subordinate employee in any way in a supervisor's political activity.
- (b) Knowingly solicit, accept, or receive a political contribution (i.e., fundraising).
Examples of activity within the scope of this prohibition include:
- (i) Personally solicit donations to a political party, political group, or political candidate or campaign, whether by mail, email, chat, in person or over the phone.
 - (ii) Hosting a political fundraiser or inviting others to a fundraiser.
 - (iii) Working a phone bank if the employee is asking for contributions.
 - (iv) 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.
 - (v) **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.
 - (vi) **Note:** "Political contribution" does not include the value of uncompensated services provided by an individual who volunteers on behalf of a candidate, campaign, political party, or partisan political group. Employees are permitted to solicit uncompensated volunteer services, provided they do not solicit a subordinate employee.
- (c) Run as a candidate in a partisan election.
- (d) Knowingly solicit or discourage the political activity of a person with business before the NRC (e.g., licensees, applicants, contractors, etc.).
2. Office of Personnel Management regulations in 5 CFR part 733 relax some of these "24/7" prohibitions for employees who reside in municipalities or political subdivisions in which the majority of voters are employed by the U.S. Government. Employees who reside in a municipality or political subdivision listed in 5 CFR 733.107, "Designated Localities," may run as independent candidates for election to partisan

- political office in local elections, and may solicit, accept, or receive political contributions for, or on behalf of, independent candidates for partisan political office in local elections. Employees are highly encouraged to consult with an ethics official before relying on these exemptions to engage in permitted forms of political activity in designated localities.
3. Special Government employees are subject to “24/7” prohibitions only while they are on duty.

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:
 - (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 partisan group;
 - (e) Making a speech on behalf of a campaign 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 under 5 U.S.C. 3105. This does not include members of the Atomic Safety and Licensing Board.

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:
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 (“further restricted” employees (i.e., Career SES) may not engage in these activities) include:

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 officials 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/Services/Pages/HatchAct-FileComplaint.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:

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.

IV. GUIDANCE AND RESOURCES

A. Office of Special Counsel website

1. The OSC has published numerous advisory opinions and guidance documents to assist Federal employees in complying with the Hatch Act. NRC employees may access these documents through the OSC Hatch Act website, at <https://osc.gov/Services/Pages/HatchAct.aspx>.
2. Any Federal employee is permitted to seek from OSC an advisory opinion concerning their own political activity through <https://osc.gov/Services/Pages/HatchAct-AdvisoryAction.aspx>.

B. Ethics Gateway

NRC employees seeking guidance on the Hatch Act may, at any time, contact an ethics official through the NRC's Ethics Gateway system, at <https://nrc.appiancloud.com>.