

NRC INSPECTION MANUAL

IIPB

MANUAL CHAPTER 1201

CONDUCT OF EMPLOYEES

1201-01 PURPOSE

To provide a standard of conduct that must be followed by NRC employees who are involved in the inspection program.

1201-02 OBJECTIVE

To advise agency employees of NRC management policies regarding conduct of employees.

1201-03 APPLICABILITY

This instruction applies to NRC employees who are involved in inspections. Involvement in inspections includes all aspects of inspection and all activities in direct support or supervision of inspection, including the activities of administrative and clerical personnel directly interacting with a licensee.

1201-04 RESPONSIBILITIES AND AUTHORITIES

04.01 Regional Administrators and Office Directors

- a. Implement the policies contained in this manual chapter.
- b. Grant waivers from the policies contained in this manual chapter when justified by the facts of a particular case or situation, but only to the extent that such waivers are consistent with government-wide standards of conduct regulations (5 CFR Part 2635).
- c. Document any waivers from policies made pursuant to 04.01.b, above.

04.02 Employees Involved in the Inspection Process

- a. Be familiar with the policies contained in this manual chapter and comply with the policies.

- b. Consult with their supervisor, the Regional Counsel, or an OGC Deputy Ethics Counselor regarding any questions or problems related to situations or activities involving conduct of employees or conflict of interest as described in this manual chapter.

1201-05 BACKGROUND AND GENERAL POLICY

Government-wide standards of conduct regulations issued by the Office of Government Ethics (OGE) set forth standards governing receipt of gifts and favors, outside employment, conflicting financial interests, the use of government property, future employment, the misuse of information, indebtedness, and other matters. The Office of General Counsel (OGC), through its Deputy Ethics Counselors, provides advice, assistance, and counseling on matters covered by the OGE regulations and other Federal ethics requirements. Employees are urged to contact OGC or the Regional Counsel to discuss questions or concerns regarding these legal requirements. Copies of the standards of conduct regulations, which are found at 5 CFR Part 2635, and Employee Announcement No. 147 dated December 2, 1992, which contains an OGC analysis of the regulations, have been distributed to all NRC employees. A copy of Employee Announcement No. 147 is attached as Appendix A.

Employees must be attentive to the high standards of integrity expected in all their activities, personal or official, and conduct themselves in a manner to create and maintain public respect for the NRC and the U. S. Government. Accordingly, this instruction establishes management policies for situations which aren't specifically addressed in the standards of conduct regulations. All cases of actual or potential conflicts of interest or situations which might lead to the appearance of a conflict of interest must be discussed with the employee's immediate supervisor.

1201-06 ACCEPTANCE OF GIFTS, ENTERTAINMENT, AND FAVORS

The standards of conduct regulations contained in 5 CFR Part 2635 provide detailed guidance to agency employees on the acceptance of gifts, entertainment, and favors from outside sources. Additional Commission guidance is set forth in Announcement No. 81, dated October 7, 1993. See Appendix B.

1201-07 PERSONAL CONDUCT

07.01 Policy. NRC employees shall maintain high standards of integrity in all their activities, personal and official, and conduct themselves in a manner to create and maintain public respect for the NRC and the U.S. Government.

- a. Alcohol and Illegal Drugs. Employees must control their off-hours activities so that they are not impaired to perform their duties during business hours.

1. Illegal drugs shall not be used, possessed, or transported.

2. In order to ensure that employees are not impaired to perform their duties, alcohol will not be consumed during working hours or within 5 hours preceding any scheduled working hours at licensee or other non-NRC facilities when the employee expects to be involved in any direct official contact with a licensee representative. This includes lunch or other times when return to the facility is expected after a short time.
 3. Individuals are not to enter any licensee's protected area or other facility if there are any lingering effects of alcohol consumption.
 4. While at a licensee site or facility, employees must comply with any additional policies of the licensee that restrict the use, storage, or transportation of alcohol. In some cases, possession of alcohol at an on-site parking lot, even if locked in the trunk of a car, would be a violation of licensee policies.
- b. Official Business and Personal Relationships. Employees shall not conduct any business activity or perform official travel that is primarily a means to continue a friendship or social activity.
 - c. Business Partnerships With Licensees. Employees are prohibited from entering into or maintaining any partnerships or shared ownership arrangements with an employee of a licensee or its contractors in any vacation property, pleasure boats, aircraft, or any other recreation or business activity. Where such arrangements were entered into before one of the involved individuals became an employee of a licensee or its contractors or the NRC, the NRC employee must discuss the matter in detail with his or her supervisor.
 - d. Work Habits and Professional Demeanor. It is imperative that NRC employees conduct themselves in a professional manner. Employees must demonstrate, by their actions and demeanor, that as Federal employees they are committed to give the public full value of their services by putting in a full day. In addition, employees are to be aware that inappropriate behavior, both during and outside of working hours, can discredit both the individual and the NRC.
 - e. Avoidance of Appearances of Loss of Impartiality. The standards of conduct regulations provide that employees take appropriate steps to avoid even an appearance of loss of impartiality in the performance of their official duties. Employees concerned that certain circumstances would raise a question of their impartiality will use the process described in 5 CFR 2635.502 to determine whether they should participate in a particular matter. Pursuant to this regulation:
 1. Employees are to inform their immediate supervisor of a friendship with a licensee employee who is authorized to speak for licensee management. Friends may include former NRC employees, classmates, or acquaintances. The

supervisor shall determine whether the friendship warrants initiating the process in 5 CFR 2635.502 to determine whether the employee is to be disqualified from participating in inspections or other matters that could directly and predictably affect the financial interest of the licensee.

2. Although 5 CFR 2635.502 does not specifically address dating, the NRC policy is that NRC employees shall not date licensee employees of those licensees or their contractors for which the employee has inspection responsibilities. The employee's Office Director or Regional Administrator may waive this prohibition upon a determination a reasonable person with knowledge of the relevant facts would not question the NRC employee's impartiality.
3. Employees are to inform their immediate supervisor of any longstanding close social or familial relationships that could create an appearance of loss of impartiality. The supervisor shall determine whether the relationship warrants initiating the process in 5 CFR 2635.502 to determine whether the employee should be disqualified from participating in inspections or other matters that could directly and predictably affect the financial interest of the individual with whom the employee has such a relationship or the employer of that individual. However, it should be emphasized that management policies are not intended to prohibit the continuation of pre-existing friendships.

07.02 Guidance. The following employee activities could result in a loss of impartiality in the performance of official duties under certain circumstances or a violation of the standards of conduct regulations, which prohibit employee acceptance of gifts from prohibited sources that exceed \$20 in value per occasion or \$50 in value during a calendar year:

- a. Accepting transportation from a licensee.
- b. Attending in-plant parties or neighborhood social functions where attendance is essentially limited to licensee or contractor employees.
- c. Participating in licensee or contractor sponsored activities, such as dances, ski clubs, travel clubs, licensee-sponsored team sports, and other employee association functions.

1201-08 ACTIVITIES AT THE PLANT AND OTHER LICENSEE FACILITIES

08.01 Policy

- a. Coffee Clubs. Employees may join informal coffee clubs at the plant.

- b. Cafeterias. Employees may utilize a facility cafeteria not reserved for management personnel provided they pay the normally charged prices.
- c. Credit Unions. Employees and their families may join a credit union associated with a licensee or a contractor.

1201-09 NRC EMPLOYEES RESIDING NEAR LICENSED POWER REACTOR FACILITIES

09.01 Applicability. This section, 1201-09, applies to NRC employees who have involvement in the inspection program of a power reactor licensee and also live near a licensed power reactor operated or being constructed by that licensee.

09.02 Policy

a. Property. NRC employees shall not buy, lease, or rent property from, or sell property to, a licensee or a licensee contractor. This restriction is not intended to exclude the purchase, lease, or rental of property from an individual employee of a licensee or its contractors nor the sale of property to such an employee. Such property must be available for general sale at a fair market value and purchased or sold through normal means, such as through a real estate agency or through newspaper advertising.

b. Neighborhood Relationships

1. Car pooling to provide transportation for neighborhood children to Scouts, Little League events, church or social youth group meetings, and similar activities is permissible. When licensee or contractor families are involved, NRC employees and their families are encouraged to provide their fair share of the transportation.
2. An NRC inspector may have occasion to inspect a neighbor's activities at the reactor site. This is acceptable for routine items. However, if it involves critical evaluations or allegations, the inspector is to inform his or her supervisor.

c. Community Activities

1. NRC employees and their families may be involved in normal charitable solicitations such as American Cancer Society, Red Cross, etc. within their neighborhoods. They may solicit contributions from local residents who may be employees of the licensee and its contractors provided that the solicitation is not targeted at licensee employees and there is no mention of affiliation with the NRC. They shall not solicit contributions on licensee property and shall not directly solicit contributions from the licensee or a licensee contractor as a corporate entity.

2. NRC employees and their families can join community or social clubs provided that such organizations are not limited to licensee or contractor employees, and provided that the NRC employees and their families obtain admission through normal channels, are not sponsored by licensee or licensee contractor employees, and pay their own way if there is an entry fee or dues.
3. Church and church-sponsored spiritual activities are not restricted regardless of the extent of participation of licensee or contractor employees and their families.
4. NRC employees and their families may participate in political activities to the extent permitted by the Hatch Act.

d. Employment by Spouse and Children

As a general rule, spouses and dependent children of NRC employees having involvement in the inspection program of the licensee shall not accept employment with the licensee, its contractors, or on-site subcontractors at the same facility where the NRC employee has duties related to the inspection program.

As a general rule, the resident inspection office shall not hire an individual whose spouse is employed at the same facility by the licensee, one of its contractors, or an on-site subcontractor.

Under 1201-04.01, the Regional Administrator is authorized to grant waivers from these policies.

The more common situations involve licensee employment of the spouse of an individual whom the resident inspection office wishes to hire as an office resident assistant. In such cases, the duties of both the NRC employee and the spouse must be considered to ensure that potential conflicts of interest are minimized. It might be necessary, for example, to restrict the activities of an office resident assistant so that the employee is not permitted to type inspection reports or inspection plans involving work within the scope of the spouse's employment.

A much more difficult situation can arise if the spouse of the resident inspector wishes to accept employment with the licensee, one of its contractors, or an on-site subcontractor. Depending on the position to be held by the spouse, there could be an apparent or real conflict of interest. For example, there is a significant difference between a spouse being employed as a plant cafeteria worker and one being employed as a secretary to the plant manager. The issue is whether a resident inspector might consciously or subconsciously color his or her findings to ensure that the spouse would continue employment and, consequently, continue to add to family income. The Regional Administrator must use great care in resolving such cases.

10.01 Applicability. This section, 1201-10, applies to NRC resident inspectors assigned to power reactor and fuel enrichment facilities.

10.02 Policy

- a. Use of Pagers and/or Cellular Phones. Pagers and or cellular phones are frequently made available to RI staff and others who provide site coverage and may be required to respond to events. These devices serve as a means to expedite communications and potentially minimize response time to an event. Consistent with this purpose, carrying pagers and cellular phones does not impose additional responsibility or restrictions for the individual. As the current guidance indicates, there should be no restrictions on personal activity when off duty while carrying a pager or phone, except, if called upon by the region, the resident inspector must make management aware of any fitness-for-duty limitations and response time capability.
- b. Respirators. The region should, as a minimum, maintain the status of inspection, radiological, and respirator qualifications for each inspector fulfilling an emergency response role. Note that IMC 1245 does not require inspectors to be respirator qualified. However, in rare instances of incident response that necessitates respirator qualification, the Regional Administrator can require an inspector to shave facial hair in order to fulfill the emergency response role.
- b, Response Time. Resident inspectors are not required to establish residence within any specific distance of a site, nor is there a specific requirement regarding response time to a site that would reasonably affect the choice of personal residence within these guidelines. "Emergency Response Resource Guide," NUREG 1442, establishes the expected time for an NRC representative to arrive on site in response to an emergency as 2 to 8 hours. The regions should be cognizant of response capability and coordinate appropriately when resident inspectors are away from the site for extended periods.

END

Appendices:

- A. Announcement No. 147, December 2, 1992
- B. Announcement No. 81, October 7, 1993

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

ANNOUNCEMENT NO. 147

DATE: Dec. 2, 1992

TO: All NRC Employees

SUBJECT: NEW GOVERNMENT-WIDE STANDARDS OF CONDUCT
REGULATIONS

The Office of Government Ethics (OGE), the agency with responsibility for providing guidance on preventing conflicts of interest, promulgated new government-wide standards of conduct regulations, which will take effect on February 3, 1993. These regulations will replace the NRC conduct regulations found at 10 C.F.R. Part 0. Because the new regulations are quite comprehensive and complex, the Office of the General Counsel has prepared the attached detailed summary of their provisions. A copy of the OGE regulations in their entirety is being distributed separately to all employees.

Because employees will be held accountable to comply with these regulations, it is essential that each employee understands their requirements. For this reason, I ask every employee to read and retain this summary as well as the regulations when received. Employees should be given at least one hour of official time to read the regulations.

The new regulations make significant changes to the current rules regarding seeking employment, gifts to official superiors, speaking at conferences, participating at widely-attended gatherings, writing letters of recommendation, accepting honorary degrees or awards with a value over \$200, participating in matters affecting a former employer, and accepting compensation for teaching, speaking, or writing.

The regulations do not contain provisions on employee participation in professional associations on government time; this issue will be addressed in a subsequent Office of Government Ethics rulemaking. In the interim, any use of official time for activities relating to professional associations must be beneficial to the NRC.

One of the most important parts of the regulations concerns acceptance of gifts from private sources. In some respects, the rules liberalize current gift-acceptance provisions. Specifically, they allow an employee to accept from anyone, including a licensee, a non-cash gift valued at \$20 or less per occasion, with a \$50 limit on gifts from that person during a year. However, the regulations prohibit accepting gifts from the same source so frequently that a reasonable person with knowledge of the relevant facts would be led to believe the employee is using public office for private gain. They also provide that it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source, such as a licensee or contractor, or because of the employee's official position. The Commission would, therefore, emphasize that, because it is essential that NRC employees maintain an arms-length relationship with those who are regulated by or have business before this agency, it would be prudent for NRC employees to exercise care even in accepting permitted gifts or meals from these sources.

Congress has not modified the law barring employees from accepting honoraria for speeches, appearances, or articles. These restrictions are mentioned in the new standards of conduct regulations and set forth in greater detail in other Office of Government Ethics regulations.

A separate set of regulations issued by the Office of Government Ethics requires that all employees who file a financial disclosure report must receive at least one hour of oral ethics training each year. Beginning in January 1993, the Office of the General Counsel will conduct ethics training in headquarters and the regions for the approximately 2,500 NRC employees subject to the financial disclosure requirements. Further details on this training will be provided to employees at a later date.

If anyone has any questions about the new regulations, please contact John Szabo in the Office of the General Counsel at 301-504-1610.

Kenneth C. Rogers
Acting Chairman

Attachment: As stated

OFFICE OF THE GENERAL COUNSEL

SUMMARY OF NEW GOVERNMENT-WIDE
STANDARDS OF EMPLOYEE CONDUCT

On August 7, 1992, the Office of Government Ethics (OGE) promulgated uniform standards of ethical conduct for Executive Branch employees. These regulations, when they become effective on February 3, 1993, will supersede (with limited exceptions) conduct regulations for all agencies, including the NRC regulations set forth in Part O of title 10 of the Code of Federal Regulations. The NRC's current regulations restricting stock ownership and requiring approval of certain outside employment will remain in effect until February 3, 1994, unless prior to that date, the NRC has, with OGE's approval, promulgated supplemental regulations continuing these requirements.

The following is a summary of the OGE regulations. An asterisk (*) indicates a significant change from current regulations, policies, procedures, or interpretations. A double asterisk (**) means that the term is defined in the regulations and described further in this Summary.

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SUBPART A -- GENERAL PROVISIONS

General principles. The regulations prescribe the 14 general principles of ethical conduct set forth in President Bush's 1989 Executive Order on ethics (E.O. 12674). Most of these principles have long been reflected in NRC's regulations, such as prohibiting use of public office for private gain. They also require employees to (1) disclose waste, fraud, abuse, and corruption, (2) satisfy their just financial obligations, (3) not engage in outside employment or activities, including seeking other employment, that conflict with official duties, and (4) endeavor to avoid actions creating the appearance of violating the law or the standards of conduct regulations. A determination on whether particular circumstances create an appearance that the law or these standards have been violated shall be made from the perspective of a reasonable person with knowledge of the relevant facts. 5 CFR 2635.101 (OGE regulations).

Definitions. Many important definitions used throughout the regulations are contained in this subpart:

* "Agency designee" is an employee delegated authority to make determinations, give approvals, grant waivers, or take actions permitted by the conduct regulations. (Until the issuance of an NRC Directive naming appropriate designees, these authorities will be exercised by officials designated in applicable provisions of 10 CFR Part 0.)

* "Employee" includes special government employees (consultants and most advisory committee members who serve less than 130 days during a 365-day period). This means that most of the standards of conduct regulations will apply to special government employees. Previously, only specified portions applied to special government employees. Different rules applying to special government employees are spelled out in the OGE regulations and in this Summary. Status as an employee is not affected by pay or leave status, or in the case of a special government employee, by the fact that the individual does not perform official duties on a given day.

"Person" is an all-inclusive term. It includes corporations, their subsidiaries, and their employees as well as non-profit organizations and foreign, state, and local governments. A corporation is deemed to control a subsidiary if it owns 50% or more of its voting securities. The definition specifically excludes a federal agency or entity or its employees when acting on behalf of the agency. 5 CFR 2635.102.

* Details. Employees on detail to another agency for more than 30 days would be subject to the supplemental conduct regulations of the agency to which the employee is detailed and not their own agency. (This means that, unlike current practice, most detailees to the NRC would be subject to this agency's stock ownership restrictions and approval requirements for certain outside employment, unless the NRC provides otherwise in an OGE approved supplemental regulation.) Employees detailed to the

legislative or judicial branches would be subject to the ethical standards of the branch to which they are detailed. An agency ethics official can exempt from the gift acceptance standards employees detailed for more than six months to an international organization or a state or local government if certain specified findings are made. 5 CFR 2635.104.

* Supplemental regulations. Agencies are authorized to issue agency-specific regulations supplementing the uniform regulations (such as the stock ownership prohibition and outside employment rules). They will be published as addenda to the OGE regulations in 5 CFR Part 2635. OGE must concur with NRC supplemental regulations. 5 CFR 2635.105.

Disciplinary actions. Violations of the conduct regulations may be cause for disciplinary action. Agencies have responsibility to initiate appropriate disciplinary action, but OGE may order or recommend corrective action if dissatisfied with the agency's response. 5 CFR 2635.106.

* Ethics Advice. Each agency will continue to have a designated ethics official responsible for coordinating and managing its ethics program, including delegating ethics counseling to deputy ethics officials. (At the NRC, the Commission has designated the General Counsel as the Designated Agency Ethics Official; the General Counsel has designated certain OGC attorneys as Deputy Counselors. Employees should obtain guidance on the conduct regulations from an OGC Deputy Counselor in the Division of Legal Counsel, Legislation, and Special Projects.) Employees will not be subject to agency disciplinary action if they follow advice from a Deputy Counselor, provided that the employee made a full disclosure of all the relevant facts. However, good faith reliance on a Deputy Counselor's opinion, while an important consideration, will not necessarily preclude the Justice Department from prosecuting an individual for statutory violations. 5 CFR 2635.107.

SUBPART B -- GIFTS FROM OUTSIDE SOURCES

Prohibitions. Employees are prohibited from directly or indirectly (**) soliciting or accepting (with certain exceptions specified below) gifts (**) from a prohibited source (**) or gifts given because of the employee's official position. A gift is solicited or accepted because of the employee's official position if it is from a person other than another employee and would not have been solicited, offered, or given had the employee not held his position as a Federal employee.

Regardless of any of the exceptions to this prohibition, employees cannot:

- accept gifts in return for being influenced in the performance of an official act,
- solicit or coerce the offering of a gift,
- accept gifts from the same or different sources so frequently that a reasonable person would conclude the individual is using public office for private gain,

- accept a gift in violation of a statute (such as the statutes barring bribery or supplementation of salary from any source other than the United States), or
- accept training by a person, such as a vendor, if its purpose is to promote its products or services. 5 CFR 2635.202.

Gift includes a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. This includes services as well as gifts of training, transportation, local travel, and lodgings and meals. It excludes (1) modest refreshments such as soft drinks, coffee and donuts that are not offered as part of a meal, (2) opportunities and benefits available to the public or a class consisting of all government employees, (3) greeting cards and other items with little intrinsic value such as plaques certificates, and trophies, (4) bank loans on terms generally available to the public, (5) pension benefits under a former employer's plan, and (6) rewards and prizes given to competitors in contests or events that are open to the public, including random drawings.

"Prohibited source" is a person who seeks official action by the employee's agency, does or seeks business with the agency, conducts activities regulated by the agency, has interests that may be substantially affected by the performance or nonperformance of the employee's official duties, or is an organization a majority of whose members meets the above description. 5 CFR 2635.203.

Indirect gift is a gift given with the employee's knowledge and acquiescence to the employee's parent, sibling, spouse, child or dependent relative because of the relationship to the employee or given to another person, including a charity, on the employee's designation, recommendation, or other specification.

Exceptions. The regulations prescribe numerous exceptions to the gift-acceptance prohibition in addition to the exclusions noted above in the definition of gift. However, the regulations prohibit employees from accepting gifts from the same source so frequently that a reasonable person would be led to believe the employee is using public office for private gain. They also provide that, even though a gift may be accepted legally,

"it is never inappropriate and frequently prudent for an employee to decline a gift offered from a prohibited source or because of his official position."

The exceptions set forth in 5 CFR 2635.204 are the following:

1. * "De minimis" exception. Employees may accept unsolicited gifts having a market value of \$20 or less per occasion, but may not accept gifts with a value of more than \$50 from a single source in a calendar year. A particular licensee and its employees would be considered a single source. This exception does not authorize the acceptance of cash or investment interests, such as stocks, bonds, or certificates of deposit. If a gift exceeds \$20 in value, the employee cannot pay the excess

over \$20 in order to accept the gift. If more than one gift offered on a single occasion exceeds \$20 in aggregate value, the employee may decline any distinct item in order to accept those items aggregating \$20 or less. (This exception represents a significant change from current regulations which generally preclude employees from acceptance of gifts and meals from the regulated community.)

2. Personal gifts. Employees may continue to accept gifts motivated by a family relationship or personal friendship. (Meals or gifts funded from corporate expense accounts are not personal gifts.)

3. Discounts. Employees may accept discounts, including reduced membership or other fees for participation in an organization, if the offer is available to all government employees and the only restrictions on membership relate to professional qualifications. Employees may also accept favorable rates and commercial discounts that are available to federal employees or to members of the public. Discounts received from non-prohibited sources may be accepted if the discount is not limited to those with a high rank or rate of pay. However, employees cannot accept a benefit to which the government would be entitled because of the use of government funds, such as a free gift resulting from the agency's purchases from a vendor.

4. * Awards and honorary degrees. Employees, including special government employees, can accept gifts, other than cash or an investment interest, of \$200 or less in value if such gifts are a bona fide award or incident to a bona fide award for meritorious public service or achievement if the donor does not have interests that may be substantially affected by the performance or nonperformance of the employee's duties or is an organization whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests may be accepted if an agency ethics official determines in writing that the award is part of an established program of recognition made on a regular basis according to written standards. Employees can accept honorary degrees from institutions of higher education if written approval is received from an agency ethics official. Meals and entertainment for the employee and family at a presentation event of the award or degree may be accepted regardless of value. (These approval requirements are new.)

5. Business-related gifts. Employees may accept meals, lodging, transportation, and other benefits resulting from the outside employment or business relationship of the employee or the employee's spouse if it is clear that the gift is not offered or enhanced because of the employee's government position. Employees may accept expenses customarily provided by a prospective employer in connection with bona fide employment discussions but must first disqualify themselves if the prospective employer has interests that could be affected by the employee's performance or nonperformance of official duties under the procedures in Subpart F of these regulations.

6. Gifts from political organizations. Only officials exempt from the Hatch Act (which restricts the political activities of federal employees) may accept meals, expenses, and other benefits for participating at political events. (The only NRC officials exempt from the Hatch Act are the Commissioners.)

7. * Speaking engagements. Employees who are speakers, panelists, or otherwise presenting information on behalf of the agency at a conference or other event may accept food and free attendance for those days that they are making their presentation. On the days they are not speaking or otherwise presenting information at the conference, employees may only accept a waiver of conference fees and meals if it is a "widely--attended" gathering (discussed below) or the sponsoring organization is a tax exempt organization under 26 U.S.C. 501(c)(3), which are generally non-profit charitable, religious, or educational institutions and some professional organizations. (In the past, NRC speakers have not been required to pay a fee to cover attendance at a conference on days when they were not speakers. In most cases, the employee could presumably accept free food and attendance for the entire event because it will qualify as a "widely-attended" gathering).

8. * "Widely-Attended" gatherings. Employees may attend "widely-attended" gatherings without cost and accept food and refreshments offered if there has been a determination that attendance is in the agency's interest because it would further agency programs or operations. A gathering is "widely attended" if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to the federal leave system, attendance at the event shall be on the employee's own time, unless administrative leave has been authorized. The determination that attendance is in the agency's interest must be made by the agency designee and may be given orally, unless the sponsor of the event has interests that would be substantially affected by the performance or nonperformance of the employee's duties or the majority of the members of the sponsoring association or organization have such interests. In such a case, the agency designee must determine in writing that the agency interest in the employee's participation in the event outweighs the concern that acceptance of the gift or free attendance may improperly influence the employee in the performance of official duties. The agency designee may authorize the employee's spouse to attend this event if other attendees will generally be accompanied by their spouses. (In the past, written approval was required for attendance at all "widely-attended" gatherings. Also, the provision relating to attendance by the employee's spouse is new.)

9. Gifts authorized by supplemental regulation or statute may be accepted, such as travel expenses from certain tax-exempt non-profit organizations for training or attendance at meetings or under the Foreign Gifts and Decorations Act.

10. * Meals, refreshments and entertainment in foreign areas. An employee assigned to duty in, or on official travel, to a foreign area may accept food, refreshments, or entertainment in the course of a breakfast, luncheon, dinner, or other meeting if (1) the value of the gift does not exceed the applicable per diem rate for the foreign area, (2) there is participation in the meeting or event by non-U.S. citizens or representatives of foreign governments or other foreign entities, (3) attendance at the meeting is part of the employee's official duties, and (4) the gifts of meals, refreshments or entertainment is not from a foreign government. (Different rules apply to receipt of gifts from foreign governments.)

* Disposition of gifts. Employees must return gifts they cannot accept or pay the donor the fair market value of the gift. Perishable gifts, such as food or flowers, may be given to charity, shared with others in the recipient's office, or destroyed. Agencies may authorize disposition or return of gifts at government expense. Employees who promptly satisfy the disposition requirements on their own initiative or after prompt consultation with an agency ethics official will not be deemed to have violated the bar on acceptance of prohibited gifts. 5 CFR 2635.205.

SUBPART C -- GIFTS BETWEEN EMPLOYEES

Prohibition on Gifts to superiors. Except as provided in this Subpart, employees cannot directly or indirectly: (1) give a gift to, or make a donation for a gift to, an official superior; or (2) solicit contributions from other employees for a gift to either their own or the other employees' official superior. Employees cannot directly or indirectly accept gifts from an employee receiving less pay than themselves unless they are not in a subordinate-superior relationship and there is a personal relationship that justifies the gift. An official superior may never coerce the offering of a gift from a subordinate. 5 CFR 2635.302.

** Official Superior means any other employee (other than the President or Vice President) including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. Employees are considered to be the subordinate of any of their official superiors.

* Exceptions to the prohibition: Items (other than cash) valued at \$10 or less may be given to a superior on an occasional basis (such as birthdays or holidays). The \$10 rule does not apply to office refreshments to be shared in the office; personal hospitality at a residence customarily provided to friends; customary items, such as "hostess gifts," given in connection with hospitality at a residence; contributions of annual leave under the government's leave transfer program; and gifts on special, infrequent occasions such as marriage, illness, birth of a child, or retirement. An employee may solicit voluntary

contributions (**) of a nominal amount from other employees to gather the funds for an appropriate gift to an official superior on a special, infrequent occasion or for items, such as food or refreshments, to be shared in the office among several employees. 5 CFR 2635.304.

** Voluntary contribution means a contribution freely given, without pressure or coercion. The amount is to be left to the employee's discretion although the employee soliciting contributions may suggest an amount or respond to an inquiry on an appropriate amount. The solicitor must make clear that employees can contribute less than the suggested amount or nothing. Employees who pay a proportionate share of the total cost of an organized lunch or similar event will be deemed to have made a voluntary contribution. 5 CFR 2635.303.

SUBPART D -- CONFLICTING FINANCIAL INTERESTS

Disqualifying interests. Employees are prohibited by 18 USC 208(a) from participating personally and substantially (**) in their official capacity in a particular matter (**) in which, to their knowledge, they or any person whose interests are "imputed" (**) to them have a financial interest (**), if the matter will have a "direct and predictable" (**) effect on that interest. 5 CFR 2635.402.

** Imputed interests are financial interests of the employee's spouse, minor child, general partner, any organization the employee serves as officer, director, trustee, general partner, or employee, or anyone with whom the employee is negotiating, or has an arrangement for, prospective employment.

** Particular matter encompasses only matters involving deliberation, decision, or action focused on the interests of specific persons or a discrete and identifiable class of persons (even though it does not involve formal parties). It may include governmental action such as legislation or policy-making narrowly focused on the interests of a discrete and identifiable class. It does not extend to broad policy options directed to the interests of a large and diverse group. Some generic rulemakings would be considered particular matters. Examples in the OGE regulations indicate that a rulemaking proceeding affecting a large group of taxpayers would not be a particular matter (such as an IRS regulation relating to depreciation), but a safety regulation pertaining to safety standards for trucks using interstate highways would be a particular matter.

** Direct and predictable effect. A particular matter will have a "direct" effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. There is no such effect if the chain of causation is attenuated or contingent on the occurrence of events that are speculative, independent, or unrelated to the matter. There will be a "predictable" effect if there is a real, as opposed to a

speculative, possibility that the matter will affect a financial interest.

** Personal and substantial. "Personal" participation means to directly participate in the matter, including direct and active supervision. "Substantial" participation means involvement that is of significance to the matter, even though it is not determinative of the outcome. Substantiality is based not only on the effort devoted to the matter, but also on its importance. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial, such as participation through decision, approval, disapproval, recommendation, investigation, or rendering advice.

Disqualification. Employees are required to disqualify themselves from participating in particular matters which affect their financial interests or ones imputed to them. There is no requirement to file a written statement of disqualification unless asked to do so by an agency ethics official or the person responsible for their assignment. However, employees who become aware of the need to disqualify themselves from a particular matter to which they have been assigned should notify their supervisor so that they can be immediately relieved of responsibility for the matter. Pursuant to 18 U.S.C. 208(b), employees with a disqualifying financial interest may participate in a particular matter if they receive a waiver from their appointing official based on a determination that the interest is not so substantial as to affect the integrity of their services to the government. (No NRC official should make this determination without first consulting an ethics official in the Office of the General Counsel.) When practicable, the OGC must consult with OGE prior to granting a waiver. 5 CFR 2635.402

Divestiture. Sale or other divestiture of the disqualifying interest will permit the employee to participate in the matter. Employees may be required to sell the interest if the continued holding is prohibited by statute or supplemental regulation or if the agency determines that a substantial conflict exists between the financial interest and the employee's duties or the accomplishment of the agency's mission.

* Prohibited financial interests. Employees cannot acquire or hold interests prohibited by statute, agency regulation, or agency determination of substantial conflict. Agencies may issue supplemental regulations prohibiting the holding of a financial interest or a class of financial interests by employees or a class of employees, based on a determination that holding the interest would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Supplemental regulations may also restrict the holdings of the employee's spouse or minor children if the agency determines that there is a direct and appropriate nexus between the prohibition or restriction and the efficiency of the service. (Current NRC stock prohibitions cover the employee, the spouse, minor children, and other relatives living in the household.

These restrictions will remain in effect until February 3, 1994, or until a supplemental regulation is promulgated, whichever occurs first. The current NRC restrictions will need to be revised to reduce their scope to exclude anyone other than the employee, spouse, and minor children.) An agency could also prohibit the holding of a financial interest if the employee would be required to disqualify himself or herself from matters critical to the performance of official duties or would adversely affect the efficient accomplishment of the agency's mission because another employee could not be readily assigned to the matter. 5 CFR 2635.403.

"Financial interest" is limited to interests owned by the employee or by the employee's spouse or minor children. The term includes any current or contingent ownership, equity, or security interest (e.g. stocks and bonds) and may include an indebtedness or compensated employment relationship. It also includes service, with or without compensation, as an officer, director, trustee, general partner, or employee of any person, including a nonprofit entity. It does not include a future interest created by someone other than the employee, spouse, or dependent child or any right as a beneficiary in an estate that is not settled. 5 CFR 2635.403(c).

Period for divestiture. Employees directed by their agency to divest themselves of a financial interest have a reasonable time to sell. Except in cases of unusual hardship, a reasonable period should not exceed 90 days. All employees, except special government employees, are eligible to defer the tax consequences of a required sale (see Subpart J). (Currently, NRC employees are given one year to divest themselves of prohibited securities that are added to the agency's prohibited stock list as a result of the annual review of that list.) 5 CFR 2635.403(d).

SUBPART E -- IMPARTIALITY IN PERFORMING OFFICIAL DUTIES

Personal and business relationships When an employee knows that a "particular matter" (**) involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his or her household or knows that a person with whom he or she has a "covered relationship" (**) is or represents a party to such matter, the employee must evaluate whether participation in the matter is appropriate. If the employee determines that the circumstances would cause a reasonable person with the relevant facts to question the employee's impartiality, the employee should not participate in the matter, unless the employee informs the agency designee of the appearance problem and receives written authorization from the designee. 5 CFR 2635.502.

* "Covered relationships." There are five categories of covered relationships:

- persons, other than prospective employers, with whom the employee has or seeks a financial relationship (except a routine consumer transaction);

- members of the employee's household or relatives with whom the employee has a close personal relationship;
- persons for whom the employee's spouse, parents or dependent child serves or seeks to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
- persons for whom the employee served in the last year as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; and
- a nonpolitical organization in which the employee is an active participant. (Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.) 5 CFR 2635.502(b).

* Agency designee authorization. Where there is a problem of an appearance of impropriety from the financial interest, the agency designee may authorize the employee to participate in the matter. The authorization shall be documented in writing at the designee's discretion or when requested by the employee. It must be based on an independent determination, after consideration of all relevant circumstances, that the government's need for the employee's participation in a particular matter outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. If authorized by the agency designee to participate in a particular matter, employees may not later disqualify themselves from participation if based on the same circumstances considered by the agency designee. 5 CFR 2635.502(d). (This provision is significant because, for the first time, there is a government-wide requirement that an employee is not to participate in matters affecting his former employer for the first year following termination of that relationship, unless prior written approval is received from the NRC.)

* Extraordinary payments from former employers. Employees who receive a severance payment exceeding \$10,000 prior to entering federal service are prohibited for two years from the date of receipt of payment from participating in any particular matter in which the former employer is a party or represents a party. It does not apply to payments made pursuant to an established compensation or benefits plan. A waiver can be granted only by the head of the agency (or person delegated authority to issue 18 USC 208(b) waivers) if there is a finding that the amount was not so substantial as to cause a reasonable person to question the employee's ability to act impartially. 5 CFR 2635.503.

SUBPART F -- SEEKING OTHER EMPLOYMENT

* Employees shall disqualify themselves from participation in any particular matter directly and predictably (**) affecting the financial interests of a person with whom they are seeking employment (a prospective employer) (**) or have any arrangement concerning prospective employment. There are no such obligations on employees seeking employment with someone whose financial interests are not affected by their official duties. (This means, for example, that an employee in one regional office may

negotiate with a utility located in another region or with a utility in their region for which the employee has no responsibility without informing the supervisor.) Employees may accept travel expenses and other reasonable amenities incident to employment discussions even from a prospective employer who is a prohibited source under the gift standards in Subpart B. 5 CFR 2635.602.

* "Seeking employment" has begun when the employee directly or indirectly:

- engaged in "negotiations," which involved discussion or communication with another person or the person's agent or intermediary, mutually conducted with a view toward reaching an agreement on possible employment. It is not limited to discussions of specific terms and conditions in a specific position;
- made an unsolicited communication (e.g., sent out a resume) to a person or such person's agent on possible employment. It does not include communications for the sole purpose of requesting a job application. Employees are not required to disqualify themselves from participating in a generic rulemaking affecting an entity to whom they have submitted a resume until the recipient responds by indicating an interest in employment discussions; or
- made a response, other than a rejection, to an unsolicited communication from a person or agent on possible employment.

An employee is no longer seeking employment when:

- either party rejects the possibility of employment and all employment discussions have terminated, or
- two months have transpired after the employee sent an unsolicited resume or proposal and the employee received no

indication of interest in employment discussions from the prospective employer.

A response deferring discussions for the foreseeable future does not constitute a rejection. 5 CFR 2635.603(c).

Prospective employer is any person with whom the employee is seeking employment. It includes a person who uses an agent or other intermediary or is contacted by an employee's agent to seek to establish an employment relationship if the agent identifies the prospective employer to the employee.

Disqualification. Employees who wish to initiate employment contacts with a person whose financial interests they know will be directly and predictably affected by a particular matter to which they will be assigned shall take steps necessary to disqualify themselves before beginning to seek employment with that person. Written disqualification statements are not necessary unless requested by the agency ethics official or the employee's supervisor. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee does not participate in matters affecting the prospective employer (**). When a disqualification will preclude the employee from participating in matters critical performance (such as a resident inspector seeking employment with the utility that operates the facility he or she is responsible for), the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

Waiver. Employees may participate in matters affecting a prospective employer (**) if they receive a waiver either under 18 USC 208(b) or by the agency designee if the designee finds that the government's need for the employee's participation outweighs the concerns that a reasonable person may question the integrity of the agency's programs or operations. The agency designee may determine that an employee no longer seeking employment shall remain disqualified for a specified period of time from matters affecting a prospective employer if the designee determines that the concern that a reasonable person may question the integrity of the agency's decision making process outweighs the Government's interest in the employee's participation in the particular matter. 5 CFR 2635.604-.606.

SUBPART G -- MISUSE OF POSITION

* Public office for private gain. Employees shall not use their public office for their own private gain, for the endorsement of any product, service, or enterprise, or for the private gain of friends, relatives, or persons with whom they are affiliated in a nongovernmental capacity, including nonprofit organizations in which they are officers or members, and persons with whom they have or seek employment or business relations. Employees shall not use their office in a manner to induce or coerce another

person, including a subordinate, to provide any benefit to themselves or their friends, relatives, or persons with whom they are affiliated in a nongovernmental capacity.

Use of title or position. Employees shall not use their government position or title in a manner that could reasonably be construed to imply government endorsement of their personal activities or those of another or to endorse any product, service, or enterprise. Employees may only sign a letter of recommendation using their official title or government letterhead paper in response to a request for an employment recommendation or character reference based on their personal knowledge of an individual they dealt with in the course of federal employment or whom they are recommending for federal employment. In instances where an employee is not able to use government letterhead or official title, the employee can mention his or her official title in the body of the letter. Employees are not prohibited, in connection with a personal activity, from using a term of address or rank that they normally employ, such as "The Honorable." 5 CFR 2635.702.

Use of nonpublic information. Employees shall not engage in a financial transaction using nonpublic information (**), nor allow the use of nonpublic information to further their own private interest or that of another through advice, recommendation, or by an unauthorized disclosure. (However, disclosures made inadvertently or by mistake would not violate this regulation.)

** Nonpublic information is information employees gain from federal employment and that they know or reasonably should know has not been made available to the general public. It includes information (1) exempt from disclosure under the Freedom of Information Act, (2) designated confidential by an agency, or (3) that has not actually been disseminated to the general public and is not authorized to be made available to the public on request. 5 CFR 2635.703.

Use of government property. Employees have a duty to protect and conserve government property and may not use it or allow its use for other than authorized purposes. 5 CFR 2635.704.

Use of official time. Unless legally authorized, employees shall not use official time other than to perform official duties. Employees shall also not encourage, direct, coerce, or request a subordinate to use official time for nonofficial activities unless legally authorized. 5 CFR 2635.705.

SUBPART H -- OUTSIDE ACTIVITIES

Employees who wish to engage in outside employment or other activities are subject to applicable requirements in this subpart, other subparts and supplementary regulations, and statutes, such as the conflict of interest laws (18 U.S.C. 201-209), the Hatch Act (prohibiting certain political activities), the Emoluments Clause of the Constitution (which bars acceptance of compensation from foreign governments), and the Ethics Reform

Act's provisions banning honoraria and limiting noncareer employees' outside compensation. 5 CFR 2635.801.

Conflicting activities. Employees shall not engage in outside activities that conflict with official duties, those prohibited by statute or agency supplemental regulation, or those which would require disqualification by reason of the conflicting financial interest or the impartiality standards (Subparts D and E). 5 CFR 2635.802.

Prior approval. Employees shall obtain prior approval for outside employment or activities if required by agency supplemental regulation. Agencies may require prior approval of outside employment by employees or any category of employees by supplemental regulation. (Current NRC regulations which require prior written approval of certain outside activities remain in effect until February 3, 1994 or until NRC promulgates a new supplemental regulation, whichever comes first. The NRC intends to promulgate a new supplemental regulation.) 5 CFR 2635.803.

Noncareer employees. Full-time noncareer Presidential appointees shall not receive any outside earned income during their appointment. Noncareer employees covered under title VI of the Ethics Reform Act (generally Commissioner assistants) may not receive outside earned income that exceeds 15 percent of annual income. 5 CFR 2635.804.

* Expert witness. An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in a U.S. court or agency proceeding in which the U.S. is a party or has a direct and substantial interest. However, the designated agency ethics official may authorize service as an expert witness (1) as being in the government's interest, after consulting with the federal agency representing the government or the agency with the most direct and substantial interest, or (2) because the subject matter of the testimony does not relate to the employee's official duties. Employees are not prohibited from serving as a fact witness under subpoena. (Special government employees who are appointed by the President, serve on a statutorily-established commission, or serve more than 60 days in a 365-day period shall not serve as expert witnesses in federal proceedings in which their employing agency is a party or has a direct and substantial interest unless authorized by the designated agency ethics official.) 5 CFR 2635.805.

* Participation in professional associations. The Office of Government Ethics will address this issue in a forthcoming rulemaking proceeding. Its proposed rule, which generally precluded federal employees from using government time to administer the affairs of professional organizations, generated considerable controversy.

Teaching, speaking, and writing. Employees, including special government employees, shall not receive compensation (***) from a nongovernment source for teaching, speaking, or writing that relates to their official duties. (This restriction is in

additional to the Ethics Reform Act's prohibition on employees' receiving certain honoraria for an appearance, speech, or article.) The prohibitions in this regulation involve activities:

- 1) undertaken as part of official duties;
- 2) where the invitation to engage in the activity was primarily extended because of the employee's official position rather than the employee's expertise;
- 3) where the invitation was extended, directly or indirectly, by a person with interests that may be substantially affected by the performance or nonperformance of the employee's duties;
- 4) where the information conveyed through the activity draws substantially on ideas or official data that are nonpublic information; or
- 5) where the subject matter focuses specifically on (a) any matter to which the employee is presently assigned to or which the employee had been assigned to during the previous year, (b) any ongoing or announced policy, program, or operation of the agency, or (c) in the case of a noncareer employee, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of the agency.

As to prohibition number 5, special government employees are only barred by subpart (a). However, special government employees who have not served the government more than 60 days in the preceding 365 days are only barred from receiving compensation for activities pertaining to particular matters involving specific parties in which they participated personally and substantially.

* For career employees, restriction 5 prohibits accepting compensation when teaching, speaking, or writing about agency policies, programs, and operations or on specific matters to which they are assigned or were assigned during the previous year. The prohibition applies only where the activity deals in significant part with the agency's policies, programs or operations and would not prohibit, for example, compensation for a speech on a general subject matter, such as nuclear power, as long as the speech only incidentally touches on agency responsibilities, programs, or operations. Restriction 5 also does not preclude employees (other than covered noncareer employees) from receiving compensation for teaching, speaking or writing on a subject within their discipline or inherent area of expertise based on their educational background or experience even though the activity generally deals with a subject within the agency's mission.

Employees are not prohibited from compensation for teaching a course requiring multiple presentations that is part of the regularly established curriculum of an institution of higher learning or an elementary or secondary school or part of an education or training program sponsored and funded by a federal, state, or local government even if the subject matter of the course focuses on the agency's responsibilities, programs, or operations.

** Compensation for these activities includes any form of consideration, remuneration, or income, including royalties and travel reimbursements, but not meals or other incidents of attendance as waiver of attendance fees or course materials.

Employees engaged in nongovernmental teaching, speaking, or writing shall not use their official title or position to identify themselves in connection with that activity or to promote a book or course. However, employees may include their title as part of biographical information (provided that it is not given greater prominence than other biographical information) or when coupled with an appropriate disclaimer in a scholarly article in professional journals that the views expressed do not necessarily represent the views of the agency. 5 CFR 2635.807.

Fundraising activities. Employees shall not use their official position to raise funds for any organization, including a charitable group, unless specifically authorized by statute, executive order, or regulation (such as the Combined Federal Campaign). Employees may raise funds in their personal capacities, but shall not solicit funds or other support from subordinates or prohibited sources, use their official title, position, official time, government resources, or authority in connection with that fundraising. An employee who is ordinarily addressed by a general term, such as, "The Honorable," or a rank, such as military or ambassadorial rank, may use or permit the use of that term of address or rank for such purposes.

Employees may continue to speak in an official capacity at appropriate events, even though the event may also serve a fundraising purpose, if the speech relates to official duties and the employee does not request donations or other support for the group. They can also attend a fundraising event as long as, to their knowledge, their attendance is not used to promote the event. 5 CFR 2635.808.

Just financial obligations. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those imposed by law, such as federal, state and local taxes. 5 CFR 2635.809.

Gambling. The Office of Personnel Management issued on November 30, 1992, final regulations that prohibit employees from conducting or participating in any gambling activity on government property or while on official duty. This prohibition includes operating a gambling device, conducting a lottery or pool, a game for money or property, or selling or purchasing a numbers slip or ticket. An exception to this rule permits these activities if they are sponsored by an employee recreation association under policies and procedures approved by the head of the relevant agency. The OPM regulations also prohibit employees from engaging in conduct prejudicial to the government. 5 CFR 735.201-203.

SUBPART I -- RELATED STATUTORY AUTHORITIES

This Subpart lists a number of statutes that establish standards to which employee conduct must conform. These include the criminal conflict of interest statutes (18 U.S.C. 201-209), which prohibit bribery, supplementation of salary, certain representations to the government, and certain post-employment activities, and laws prohibiting certain contracting practices and nepotism.

Appendix B

ANNOUNCEMENT NO. 81

DATE: October 7, 1993

TO: ALL NRC Employees

SUBJECT: ATTENDING HOSPITALITY SUITES; DINING WITH PROHIBITED SOURCES; SPEAKING AT INDUSTRY-SPONSORED CONFERENCES; COMPENSATION FOR OFF-DUTY SPEAKING, TEACHING, OR WRITING; NEWLY ISSUED MANAGEMENT DIRECTIVES ON ETHICS RELATED ISSUES

New government-wide standards of conduct for Executive Branch employees became effective February 3, 1993. The new regulations made major changes in the standards of conduct, particularly in the area of gift acceptance, speaking at conferences, and accepting compensation for teaching, speaking or writing about NRC related matters. As a result, during agency-wide ethics training this past year, NRC employees raised a number of issues relating to the acceptance of gifts and speaking at industry-sponsored conferences. Because these issues warrant further discussion, this announcement provides suggested factors employees should consider in making prudent judgments and also informs employees of NRC Management Directives and Handbooks on ethics-related issues.

I. HOSPITALITY SUITES

A frequently asked question at ethics training sessions this year related to the propriety of NRC employees' accepting food and drink at industry-sponsored hospitality suites. During the discussion of this issue, questions were also raised on the propriety of employees' attending these gatherings and many employees requested additional guidance on what they should do.

As to the first question, an employee attending a hospitality suite may accept food and refreshments that are offered if the employee complies with the new conduct regulations issued by the Office of Government Ethics (OGE) on receiving gifts from prohibited sources, which include entities that are regulated by the NRC, have business before the agency, or have interests that may be substantially affected by the performance or nonperformance of the employees' duties.

As to the second inquiry, employees can legally attend such gatherings and the NRC may not take disciplinary action against

the employee if the employee complied with applicable Office of Government Ethics (OGE) regulations. However, it may not be prudent in some instances for an employee to attend these events to preclude any perception that the agency is not impartial toward an entity that it regulates and a case-by-case determination must be made by the employee as to whether or not it would be prudent for an NRC employee to attend them.

A. Food and Refreshments

There are two distinct Office of Government Ethics regulations that govern acceptance of food and drink at industry-sponsored hospitality suites or other social functions. See 5 C.F.R. §§ 2635.204(a) and (g). Briefly put, under a new exception in section 2635.204(a), an agency employee may accept on a single occasion an unsolicited non-cash gift, such as food and drink, worth up to \$20 from a prohibited source, such as an NRC licensee or other entity having business before the agency. An employee legally may accept up to \$50 of such gifts each calendar year from that prohibited source. No supervisory approval is required to accept gifts falling within these parameters. Therefore, employees may accept food and refreshments at a hospitality suite if their value does not exceed \$20.

Under a second exception in section 2635.204(g), the \$20/\$50 limitation described above does not apply if the event is a "widely-attended gathering", which is defined as a conference or other event open to a wide range of people throughout a given industry or profession. Under the new OGE rules, an event can be considered a "widely attended gathering" even if it is sponsored by a single licensee or vendor. (In the past, the event had to have multiple sponsors before it could be so classified.) Once an event is determined to be a "widely-attended gathering", the employee may accept food and drink regardless of its value. However, before an employee may attend a "widely-attended gathering", the employee's supervisor must make a determination that attendance is in the agency's interest, as required by OGE regulations. If the employee has responsibilities which could affect the sponsoring entity, the approval must be in writing.

The OGE regulations, however, make clear that, even though it may be legal for employees to accept gifts from licensees and other prohibited sources under the exceptions discussed above, "it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source". 5 C.F.R. § 2635.204. In some circumstances, acceptance of permitted gifts may not constitute exercise of prudent judgment. Consistent with this guidance, the Commission in Announcement 147 dated December 2, 1992, reminded employees that, "because it is essential that NRC employees maintain an arms-length relationship with those who are regulated by or have business before this agency, it would be prudent for NRC employees to exercise care even in accepting permitted gifts or meals from these sources." The Commission's concern for preserving such an arms-length relationship recognizes that NRC's fundamental mission of

protecting the public health and safety from radiological hazards has a "perception" aspect; i.e., the NRC must not only in fact protect the public health and safety but also be seen to be a credible regulator. Thus, NRC employees, in judging whether to accept gifts which are permitted under OGE rules, must take into account potential damage to this essential arms-length relationship.

The Commission further notes that, under the OGE regulations, it is never acceptable to solicit or coerce the giving of a gift from a prohibited source or to accept a gift in return for being influenced in the performance of official duties. This could result in a violation of the criminal statute prohibiting acceptance of bribes.

B. Attendance at Hospitality Suites

With this background, the Commission offers the following policy guidance on attending events at industry-sponsored hospitality suites. While under the OGE regulations employees may always attend events at industry-sponsored hospitality suites if they comply with the rules on acceptance of food and drink, there may be situations where it would not be prudent for employees to visit these suites because of the need for NRC employees to maintain an arms-length relationship with the industry. On the other hand, the Commission recognizes that there will be situations where it will be in the agency's interest for employees to attend a function at a hospitality suite. Factors to be considered in making a prudent judgment on visiting a hospitality suite include whether vendor products of interest to the NRC are being displayed in a hospitality suite; whether the employee is currently involved in inspections, investigations, licensing reviews, procurement, or rulemaking activities that could directly affect the financial interests of the sponsoring entity; adverse public perceptions that could result from attendance; and whether attending the suite offers a good opportunity to discuss pertinent issues with conference attendees. Employees should make case-by-case determinations on the wisdom of visiting hospitality suites. The Commission expects its employees to exercise good judgment and to be conscious always of the image their actions portray to the public.

II. DINING WITH PROHIBITED SOURCES

This announcement also affords the Commission an opportunity to discuss a related issue: employees' dining with representatives of licensees and other prohibited sources. As stated above, the Office of Government Ethics regulations permit a licensee or contractor to pay for an employee's meal which does not exceed \$20, provided that the collective value of all meals (gifts) from that prohibited source does not exceed \$50 in a year. Therefore, there would be no violation of any law or regulation if a licensee paid for an NRC employee's meal that was less than \$20

in value or if the NRC employee paid for his or her share of the meal. Under either situation, the NRC could not take any disciplinary action against the employee.

However, as in the issue of hospitality suites, the Commission expects that employees will use sound judgment in deciding whether it would be prudent to dine with a representative of a prohibited source even if the meal is less than \$20 or the employee pays the fair share of his or her meal. It is important that agency employees maintain an arms-length relationship with the regulated community.

Situations where an employee could appropriately dine with licensee representatives include widely-attended gatherings, conferences, seminars, professional association meetings, and working lunches. Dining with relatives or longstanding personal friends employed by the regulated community generally is also unobjectionable. In other situations, an employee should consider factors such as whether the employee currently has adjudicatory, inspection, licensing, investigatory, or procurement responsibilities that could affect the financial interests of a particular entity. The presence of such factors could make it imprudent for that employee to dine with representatives of that entity.

If anyone has any questions regarding the application of these policies to particular factual situations, please contact your supervisor. As appropriate, supervisors may consult with a deputy counselor in the Office of the General Counsel or the regional counsel.

III. SPEAKING AT INDUSTRY-SPONSORED CONFERENCES

At ethics training sessions, some employees sought guidance on when it is appropriate for NRC employees to speak at industry-sponsored conferences or meetings. The agency's policy is set forth in a memorandum dated August 25, 1987, from the Executive Director For Operations to all Office Directors and Regional Administrators. The policy is as follows:

If a conference is primarily intended to provide a financial benefit for the sponsor or is promotional in content, NRC employees on official duty should not participate as panelists or lecturers.

If on the other hand the purpose of the conference is educational or for an informational exchange, NRC personnel may participate while on official duty. The criterion for judging whether participation is warranted is if the agency will benefit from the employee's participation in the event.

The employee's supervisor must make a case-by-case determination whether the conference is educational or promotional. Certain factors can aid in this determination.

For instance, open attendance at a conference is more indicative of an educational purpose, as is an agenda that presents a balanced view of the issues under discussion. By contrast, if attendance is restricted to those persons who use the sponsor's products, or the agenda is limited to those issues related to the sponsor or its products, the seminar is more likely promotional in nature.

Employees are precluded from receiving any speaking fees or other compensation from the sponsoring entity for participating in conferences and seminars while on official duty time. Employees may accept a waiver of the conference fees and free food and drink on the days that they are speakers. On the days they are not conference speakers, the conference registration fee may be waived, and free food and drink accepted, if one or both of the following conditions apply: the conference is a "widely-attended gathering", or the sponsor is classified as a charitable organization under § 501(c)(3) of the Internal Revenue Code. If the "widely-attended" gathering exception is used, prior supervisory approval is required to accept a waiver of the registration fee or food and drink.

This issue is discussed in more detail in Announcement 147, issued on December 2, 1992. (Copies are available from Lee Cadorette, OGC.)

IV. COMPENSATION FOR OFF-DUTY SPEAKING, TEACHING, OR WRITING

The rules on off-duty speaking, teaching, or writing have been affected by recent judicial decisions and the new standards of conduct.

A. Activities Relating to Official Duties

Employees are generally prohibited under the new conduct regulations from receiving any compensation from someone other than the Government for speaking, teaching, or writing on their own time on matters relating to their official duties, including any ongoing or announced policy, program, or operation of the NRC. Compensation that is barred under this regulation includes travel expenses. (However, employees can be compensated for teaching a course on NRC-related topics that is part of the regular curriculum of a school or university.)

On January 29, 1993, the U.S. Court of Appeals for the D.C. Circuit issued an important ruling on the issue of accepting compensation for off-duty speaking and writing. In William Sanjour v. EPA, two employees of the Environmental Protection Agency (EPA) were barred from recovering travel expenses from an environmental organization which had invited them to speak, in an unofficial capacity, on certain EPA programs. The two employees often criticized the EPA in their speeches. At issue was an OGE regulation (5 C.F.R. § 235.807) which permits employees to be reimbursed for travel expenses from some organizations for "official" but not for "unofficial" speeches that focus on the

employee's official duties or the responsibilities, policies, and programs of their employing agency. For purposes of this regulation, official speeches are considered those authorized by the agency and made on agency time. The EPA employees challenged the regulation and its interpretation as violating their First Amendment rights to free speech.

The court disagreed with the two employees. It held, in a 2-1 opinion, that the regulation on its face did not violate their First Amendment rights. After analyzing the competing interests of both the government and employees, the court held that the regulation was narrowly tailored to avoid appearances of impropriety, by barring acceptance of travel expenses for unofficial speeches on agency-related topics, and was therefore valid provided it was not applied in a discriminatory manner based on speech content. The effect of this opinion is to bar all recovery of travel expenses by Federal employees for speeches made on their own time that deal with agency-related topics. This, however, does not bar receipt of travel expenses associated with teaching a course at accredited universities on NRC related topics.

On July 29, 1993, the Court of Appeals granted a motion for a rehearing of the Sanjour case by the entire court. A date for the rehearing has not been set.

B. Honoraria Ban Declared Unconstitutional

On September 21, 1993, the Court of Appeals for the D.C. Circuit denied the Government's suggestion to rehear a three-judge panel's decision in NTEU v. United States. That panel affirmed a district court decision invalidating the prohibition in the Ethics Reform Act of 1989 on Executive Branch employee's accepting honoraria for any off-duty speech, article, or appearance, even if there is no relation between the activity and the employee's official duties. (The decision does not affect the OGE regulations' prohibition on receiving compensation for teaching, speaking, or writing that relates to an employee's official duties.)

As a result of the Court of Appeals decision, the Department of Justice has advised that the Government is barred from requiring Executive Branch employees' compliance with the statutory ban against accepting honoraria for speeches, articles, or appearances that are not related to the employees duties. In addition, the Government cannot prevent employees from accepting honoraria placed in escrow or deferred in accordance with advice from the Office of Government Ethics.

However, the Solicitor General has until December 20, 1993, to file a petition requesting the Supreme Court to review this ruling. The Solicitor General has not yet decided whether to file a petition. The Solicitor General has made no decision as to what, if any, remedies may be available and appropriate where Executive Branch employees have accepted honoraria during this interim period if further review is sought in the Supreme Court

and the decision of the court of appeals is ultimately reversed.

The Office of the General Counsel will advise agency employees of the final outcome of both the Sanjour and NTEU cases.

V. MANAGEMENT DIRECTIVES

A number of Management Directives on ethics-related topics have recently been issued to implement the new government-wide regulations issued by the Office of Government Ethics. Much of the information contained in these publications was previously contained in the NRC employee conduct regulations (10 CFR Part 0). Because the new government-wide standards of conduct regulations supplanted the NRC conduct regulations in most areas, many portions of 10 C.F.R. Part 0 have now been repealed. Management Directives recently issued are: M.D. 7.5 (Ethics Counseling); M.D. 7.6 (Public and Confidential Financial Disclosure Reports); M.D. 7.9 (Ethics Approvals and Waivers); M.D. 7.10 (Annual Ethics Training); and M.D. 7.12 (Enforcement of Post-Employment Restrictions). Of these Management Directives, M.D.s 7.6 and 7.9 are the most significant. M.D. 7.6 specifies which employees must submit financial disclosure reports. M.D. 7.9 specifies the agency officials who have been authorized to grant the various ethics waivers and approvals required under the OGE regulations. Each agency office has a copy of these directives.

Other ethics-related Directives that are expected to be issued later this year include: M.D. 7.7 (Security Ownership); and M.D. 7.8 (Outside Employment and Other Outside Activities).

Forrest J. Remick
Acting Chairman