

NRC Ethics

Office of the General Counsel (OGC)

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MAJOR ETHICS RULES AFFECTING NRC SPECIAL GOVERNMENT EMPLOYEES

Special Government employees (SGE) are subject to the laws and regulations on ethics that apply to full-time employees, unless specifically exempted. These laws and regulations include the criminal conflict-of-interest statutes and the government-wide regulations on employee conduct, financial disclosure, ethics training, and post-employment.

Most NRC advisory committee members and consultants are hired as “special Government employees,” which is legally defined as officers or employees who are retained, designated, appointed, or employed to perform temporary duties on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. 18 U.S.C. § 202(a). A part of a day is counted as a full day for purposes of determining the number of days that an SGE has worked, including days spent traveling on Government business.

When appointed, SGEs are given a copy of the employee standards of conduct regulations, an analysis of the regulations by the Office of the General Counsel (OGC), and the NRC supplemental conduct regulations.

Any SGE who has a question or concern about any ethics matter should contact an Ethics Official in the Office of the General Counsel.

SUMMARY

The following is a summary of the major conflict-of-interest laws and regulations that apply to special Government employees.

Financial Interests (18 U.S.C. 5 U.S.C. §§ 7321-7326 208(a); 5 C.F.R. § 2640)

A criminal conflict of interest law prohibits SGEs, unless they receive a waiver, from participating personally and substantially in any particular Government matter (including a rulemaking) that could directly and predictably affect their financial interest or the financial interest of their spouse; minor child; general partner; an organization in which they serve as officer, director, trustee, general partner, or employee; or an organization with which they are negotiating or have an arrangement for prospective employment.

I: Securities: Government-wide regulations permit SGEs to participate in a Government “particular matter involving specific parties” if the value of their security holdings does not exceed \$15,000. (A “particular matter involving specific parties” means a specific proceeding associated with identifiable parties in which the Government is a party or has a direct and substantial interest, e.g., contract, grant, litigation, license application or amendment, investigation, inspection, claim, or enforcement. It does not include general rulemaking, legislation, or the formulation of general policy, objectives, or standards).

If an SGE is assigned to work on a particular matter of general applicability (i.e., a matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties) , such as a rulemaking, the SGE can participate if the value of his or her security holdings in a single entity affected by the rulemaking does not exceed \$25,000; if the SGE has securities in more than one entity affected by the rulemaking, the SGE can participate if the total value of his or her holdings in these entities does not exceed \$50,000.

Example 1: A consultant, who is appointed as an SGE, may not review a proposed license amendment if the licensee is the consultant's employer or private client or if the consultant owns stock in the licensee exceeding \$15,000 in value (unless the consultant's NRC office director issues a written waiver after consultation with the NRC Office of the General Counsel.)

Example 2: An advisory committee member, who is an SGE, is advising the NRC on a proposed regulation that could affect a number of licensees. The member owns stock in one of the companies affected by the regulation. The member can advise the agency on the proposed rule if the value of that stock does not exceed \$25,000; the member can also advise on the rule if the total value of stocks he or she owns in all companies potentially affected by the regulation does not exceed \$50,000.

II. Advisory Committee Members Only: Advisory committee members who are SGEs are specifically allowed to participate in particular matters of general applicability (such as rulemakings) that affect their private employer or prospective employer. The particular matter must not have a special effect on the committee member or the employer, except as part of a class. (This exemption does not apply if the committee member either owns the private employer's stock or is a consultant or contractor to that party.)

III. Mutual funds: SGEs can participate in matters affecting their holdings in a mutual fund they own if the fund's investments are diversified. (“Diversified” means that the fund does not have a policy of concentrating its investments in a specific "sector," such as an industry, business, foreign country, or state.) They can also participate in matters affecting holdings in a “sector fund” if their investment in the sector fund does not exceed \$50,000.

Example 1: A consultant, who is appointed as an SGE, owns shares in ABC Growth Fund, which is a “diversified” mutual fund. The fund's portfolio contains stock of an NRC licensee.

Because the fund is diversified, the consultant can review the licensee's request to the NRC for an amendment to its license.

Example 2: If the consultant held more than \$50,000 in a "sector" mutual fund (such as ABC Health Fund), the consultant could not review an amendment to a medical materials license if the fund's portfolio contains securities of the licensee.

Representations to the Government (18 U.S.C. §§ 203, 205)

Criminal conflict of interest laws prohibit SGEs from representing a non-Federal party before any Federal agency or court on any "particular matter involving specific parties" in which the SGE personally and substantially participated while a Federal employee or SGE. SGEs are also prohibited, in some instances, from receiving compensation from a party resulting from the activities of the SGE's business partner or colleague.

Example 1: An SGE who worked on a license amendment could not urge an NRC official, on behalf of the licensee, to approve the amendment even if the SGE receives no fee in return.

Example 2: If the business partner of an SGE represents a licensee to the agency on a license amendment that the SGE reviewed for the agency, the SGE could not receive a partner's share of the fee from the licensee for his partner's services before the agency on that amendment.

In addition, an SGE who served the NRC for more than 60 days within the preceding 365 days is also barred from representing a non-Federal party (or accepting compensation for representational activities) on any "particular matter involving specific parties" that is pending before the agency, including a particular matter that the SGE did not work on for the NRC.

Example: An SGE who served the NRC for more than 60 days during a year could not represent a licensee to the NRC even on a proposed license amendment in which the SGE will not be involved in an official capacity as an NRC employee.

Impartiality (5 C.F.R. § 2635 subpart E)

The government-wide standards of conduct regulations require SGEs to disqualify themselves, unless they receive a waiver, from participating in any "particular NRC matter involving specific parties" which the SGE knows is likely to have a direct and predictable effect on the financial interests of a member of the SGE's household if a reasonable person would question the SGE's impartiality. This ban includes anyone with whom the SGE has a "covered relationship" if that person is or represents a party. (A "covered relationship" includes: anyone with whom the SGE has a business, contractual, or other financial relationship; a relative with whom the SGE has close personal relationship; and anyone the SGE has served during the past year as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.)

Example: An SGE's involvement in an NRC inspection where the SGE's brother is an officer of a licensee would raise a question of impartiality.

NRC Title or Position (5 C.F.R. § 2635.702)

The standards of conduct regulations prohibit SGEs from using their NRC title or position for their personal gain or the gain of anyone else. SGEs are also prohibited from appearing to show preferential treatment towards or endorsing anyone in their official capacity.

Nonpublic Information (5 C.F.R. §§ 2635.703-704)

The standards of conduct prohibit SGEs from engaging in a financial transaction using nonpublic information, allowing the improper use of nonpublic information to further their interest or anyone else's interest, or making any unauthorized disclosure of such information.

("Nonpublic information" means information gained through Federal employment which has not been made available to the general public. It includes NRC plans, policies, reports, studies, financial plans, or internal data protected by the Privacy Act or withholdable under the Freedom of Information Act.)

NRC policy also prohibits SGEs from taking nonpublic NRC documents upon termination of NRC service or using nonpublic information in grant applications or contract bids, including agency records the SGE wrote or reviewed that have not been released to the public. NRC requests that SGEs neither communicate nonpublic information to others after termination of service nor use nonpublic information in grant applications or contract bids submitted to the agency.

Example: A former SGE should not give a client unreleased NRC information that is not publicly available concerning an ongoing licensing proceeding that the SGE was involved in for the agency. The former SGE should also not provide the client with nonpublic information which would be part of the client's bid for an NRC contract.

NRC Time and Property (5 C.F.R. §§ 2635.704-705; Management Directive 2.7)

The standards of conduct require that SGEs use official time in an honest effort to perform official duties. SGEs have a duty to protect and conserve Government property and are generally prohibited from using Government equipment during official duty time for other than official purposes. However, NRC policy allows SGEs limited use for personal needs of information technology property, such as computers, photocopiers, fax machines, the Internet, or e-mail if it does not interfere with official operations, involves minimal or no additional expense to the Government, and is conducted on non-work time.

Bribery (18 U.S.C. § 201)

The criminal law prohibits SGEs from seeking, accepting, or agreeing to receive anything of value for being influenced in the performance or nonperformance of an official act.

Post-Employment (18 U.S.C. § 207)

The criminal law prohibits former SGEs from ever representing a non-Federal party to a Federal agency or court, with intent to influence Government action, on any “particular Government matter involving specific parties” in which the former SGE personally and substantially participated as a Government employee.

Example: A former NRC consultant who advised the agency about a proposed enforcement action could not later appear before the agency for the licensee on that action.

Gifts from Outside Sources (5 CFR § 2635 subpart B)

The standards of conduct prohibit SGEs from soliciting or accepting gifts given directly or indirectly by licensees, applicants, contractors, anyone seeking business with the agency, anyone with interests that the SGE could affect, or an organization with a majority of members who meet the above description. SGEs also cannot accept gifts that are given because of their NRC position or if given from the same source so frequently that a reasonable person with knowledge of the relevant facts would be led to believe that the SGE is using public office for private gain.

Exceptions to this prohibition include gifts given because of the SGE’s non-Federal business or employment, coffee or refreshments provided at meetings, non-cash gifts valued at \$20 or less from any one source (with a \$50 limit per source during a year), gifts from friends or family members, and attendance at widely attended gatherings.

Example: An NRC consultant, who is an SGE, works for a company that has an NRC license. There is no objection to the company’s granting the SGE a bonus, based on the company’s performance standards for all its employees. There would be a bar to accepting the bonus if it was granted because the SGE is an NRC consultant.

The NRC emphasizes that, because it is essential that employees and SGEs maintain an arms-length relationship with regulated entities and contractors, it would be prudent for them to exercise care even in accepting permitted gifts or meals from these sources.

Gifts to Supervisors (5 C.F.R. § 2635 subpart C)

The standards of conduct prohibit SGEs from giving a gift to any employee who directs or evaluates their performance, including superiors of their immediate supervisors. Supervisors are also prohibited from accepting or coercing a gift from employees or SGEs they supervise. Exceptions include non-cash items of \$10 or less on gift-exchanging occasions (such as birthdays or the holiday season), refreshments shared in the office, and hospitality offered at home. Gifts of more than \$10 in value can be given to supervisors for special, infrequent occasions, such as retirement, marriage, or the birth or adoption of a child.

Outside Teaching, Speaking, or Writing (5 C.F.R. § 2635.807)

The standards of conduct prohibit SGEs who serve or are expected to serve more than 60 days during a 365-day period from receiving compensation for outside teaching, speaking, or writing that relates to their NRC duties. This includes an activity where the subject matter of the outside activity deals in significant part with any matter that the NRC assigned the SGE or was assigned during the previous year.

Example: An SGE who is not expected to serve NRC for more than 60 days during the year could receive a fee for an article about proposed NRC regulations that the SGE reviewed for the NRC. (As stated in the last footnote, regulations are not “particular matters involving specific parties.”)

If the SGE is not expected to serve NRC for more than 60 days during a one-year period, the prohibition is only on “particular NRC matters involving specific parties” in which the SGE participated or is participating personally and substantially.

Example: An SGE who works for more than 60 days during a year cannot accept a fee for an article on NRC regulations the SGE reviewed because the regulations are the subject of the SGE’s NRC assignment.

This restriction does not apply to teaching a regularly established course at an institution of higher learning, an elementary or secondary school, or a program sponsored and funded by the Federal, State, or local Government.

Example: An SGE who is a professor at a university could continue to teach a regular college course that includes discussing the work that the SGE is directly involved in for the NRC, provided that the NRC information used is publicly available.

Security Ownership Restrictions (5 C.F.R. § 5801.102)

The NRC supplemental standards of conduct regulations prohibit SGEs who are members of the Advisory Committee on Reactor Safety and Safeguards, the Advisory Committee on Nuclear Waste and Materials, and the Atomic Safety and Licensing Board Panel (as well as their spouses and minor children) from owning securities issued by nuclear industry entities on NRC’s prohibited securities list. Other SGEs are not subject to this restriction.

Financial Disclosure (5 C.F.R. § 2634)

A. Public Report

SGEs who are paid above grade level GG-15 and who are expected to work more than 60 days during a year must file a public financial disclosure report (SF 278) within 30 days after beginning service, annually thereafter, and within 30 days after termination of service.

B. Confidential Report

All other SGEs must file a confidential financial disclosure report (OGE Form 450) within 30 days after beginning service and annually thereafter.

Fundraising (5 C.F.R. § 2635.808)

The standards of conduct prohibit SGEs from soliciting contributions for a charity or cause from anyone the SGE knows has interests that could be substantially affected by the performance or nonperformance of the SGE's Government duties.

Expert Witness (5 C.F.R. § 2635.805)

These standards prohibit SGEs who do not serve or are not expected to serve more than 60 days during a 365-consecutive-day period from serving as an expert witness, with or without compensation, before a Federal court or agency for a non-Federal party in a proceeding in which the United States is a party or has a direct and substantial interest if the SGE participated in the proceeding or the particular subject matter of the proceeding while a Federal employee, unless the SGE receives authorization from NRC's General Counsel.

An SGE who has served or is expected to serve more than 60 days during a 365-consecutive day period cannot serve as an expert witness for a non-Federal party, with or without compensation, in any proceeding before a Federal agency or court in which the NRC is a party or has a direct and substantial interest, unless the SGE receives authorization from NRC's General Counsel.

Job Seeking (18 U.S.C. § 208(a); 5 C.F.R. § 2635 subpart F)

The criminal statutes require SGEs to disqualify themselves from participating in any particular NRC matter, including rulemaking and other generic matters, that will have a direct and predictable effect on the financial interest of a person with whom the SGE is negotiating or has any arrangement for future employment, unless the SGE receives a waiver from the SGE's office director or regional administrator.

Example: An SGE should not advise the NRC on a proposed license amendment if the SGE intends to apply for a position with the licensee. Before applying for that position, the SGE should be removed from any involvement with that amendment.

Foreign Governments

A. Emoluments Clause of the Constitution (Article 1, § 9, Clause 8)

The Emoluments Clause of the U.S. Constitution prohibits persons who hold offices of profit or trust in the U.S Government from having any position in or receiving any payment from a foreign

government. This includes political subdivisions of a foreign government, such as a city or province, a government agency, a public university, or a commercial enterprise owned or operated by a foreign government. An SGE should contact an ethics official in the Office of the General Counsel before accepting a position or payment from a foreign government or entity.

B. Foreign Gifts and Decorations Act (5 U.S.C. § 7342; 41 C.F.R. §§ 101-49)

This Act prohibits SGEs from accepting a gift exceeding \$415 in value from a foreign government or an international organization. (The restriction also extends to the spouse and dependents of the SGE.) A prohibited gift includes travel expenses exceeding \$415 in value, unless the travel takes place entirely outside the United States. SGEs can accept travel and travel-related expenses from a foreign government to cover the costs of activities taken on behalf of that government as part of their duties to the United States Government.

Procurement Restrictions

A. Procurement Integrity Act (41 U.S.C. § 423; 48 C.F.R. § 3.104)

The Procurement Integrity Act requires SGEs who personally and substantially participate in an NRC procurement over \$100,000 to promptly report in writing to their supervisor and ethics official any contacts with or by a bidder or offeror regarding possible non-Federal employment. They must then either reject the possibility of non-Federal employment or disqualify themselves from further participation in that procurement unless authorized in writing.

Former SGEs who served in certain procurement positions or made certain decisions on a procurement exceeding \$10 million are prohibited from accepting compensation from that contractor as an employee, officer, director, or consultant for one year after ceasing performance on that procurement.

Current and former SGEs with access to contractor bids or proposal or source selection information are prohibited from knowingly disclosing this information before the award of the contract unless authorized by the appropriate NRC official. This prohibition applies to anyone who is acting or has acted on behalf of the Government or who advised the Government on a procurement. In addition, the regulations prohibit anyone from knowingly obtaining this information prior to the award of the contract without authorization.

B. NRC Noncompetitive Contracts (48 C.F.R. § 2009.100)

The NRC procurement regulations provide that the NRC will not award a noncompetitive contract or task order to anyone who was employed by the agency within two years of the date of the request for the procurement action for that contract or task order, unless a waiver is granted by the appropriate NRC contracting official. This restriction also applies to a firm in which the former SGE is a partner, principal officer, majority stockholder, or is otherwise controlled or predominately staffed by former NRC employees. Furthermore, this restriction

applies to any former NRC SGE acting as a principal under a task order type contract or a principal under a noncompetitive contract awarded under the Small Business Administration 8(a) program.

Political Restrictions (Hatch Act) (5 U.S.C. §§ 7321-7326; 5 C.F.R. § 734)

The Hatch Act subjects SGEs to its restrictions on partisan political activities only during the period when they provide services to the Government.