

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

<b>MD 9.7</b>	<b>ORGANIZATION AND FUNCTIONS, OFFICE OF THE GENERAL COUNSEL</b>	<b>DT-15-12</b>
<i>Volume 9:</i>	Organization and Functions	
<i>Approved By:</i>	Stephen G. Burns, Chairman	
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<i>Issuing Office:</i>	Office of the General Counsel	
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<b>EXECUTIVE SUMMARY</b>		
<p>Directive and Handbook 9.7 are being revised to accurately describe functions assigned to the various divisions with some additional specificity. This revision informs the staff of the following:</p> <ul style="list-style-type: none"><li>• How the Office of the General Counsel is organized, and</li><li>• The functions performed by the Office of the General Counsel.</li></ul>		

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## **I. SUPERVISION**

This office is under the supervision of the General Counsel who reports to the Commission.

## **II. FUNCTIONS**

This office directs matters of law and legal policy, providing opinions, advice, and assistance to the agency. Specifically, the office—

- A.** Provides agency officials with legal opinions and advice with respect to all NRC regulatory activities including, but not limited to, the interpretation of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Reorganization Plan No. 1 of 1980, the Administrative Procedure Act, the National Environmental Policy Act, the Nuclear Waste Policy Act of 1982, as amended, and the Energy Policy Act of 2005.
- B.** Provides advice on the legal form and content of proposed official actions.
- C.** Provides the Commission and program offices with legal advice and counsel on licensing, rulemaking, and enforcement matters that arise in the reactor, materials, and waste safety programs.
- D.** Prepares or concurs, as appropriate, in delegations of authority, Orders, licenses, other legal documents, including interagency agreements and contracts, and regulations, notices, and other documents that are to be published in the *Federal Register*, except for those matters that have been specifically delegated by the Commission to the Atomic Safety and Licensing Board Panel and adjudicatory boards or presiding officers appointed therefrom.
- E.** Provides legal advice to management officials, as appropriate, in the areas of employee relations, labor relations, equal employment opportunity, and personnel.
- F.** Provides advice and assistance to NRC staff related to petitions for action under 10 CFR 2.206 and petitions for rulemaking.
- G.** Takes appropriate action to represent and protect the interests of NRC in court proceedings, administrative tribunals, and in relation to other Government agencies, committees of Congress, foreign governments, or members of the public. (In accomplishing this function, considers the separation of functions requirements of the Administrative Procedure Act and Commission regulations.)

- H. Requests, when appropriate, Department of Justice representation for present or former Federal officials or employees sued individually for actions performed within the scope of their employment, when this representation is requested, as provided in 28 CFR Part 50, "Statements of Policy."
- I. Prepares legislative material, including draft legislation initiated by NRC, and comments on proposed legislation submitted to NRC for its views in coordination with appropriate NRC officials and serves as NRC liaison to the Office of Management and Budget on legislative matters.
- J. Drafts agency comments on proposed Executive Orders in coordination with appropriate NRC officials.
- K. Serves as the Designated Agency Ethics Official for NRC and as the NRC contact with the Office of Government Ethics, the Office of Personnel Management, and the Department of Justice with respect to matters relating to conflicts of interest and ethical conduct, and provides advice and training to agency personnel on ethics issues, pursuant to ethics statutes and regulations, principally the Ethics in Government Act of 1978, Executive Order 12731, 5 U.S.C. Sections 7321–7326, 18 U.S.C. Sections 201-299, and 5 CFR Parts 2634–2641 and 5801.
- L. Provides the agency with legal advice and opinions on acquisition matters, including agency procurement contracts, placement of work at Department of Energy national laboratories, other interagency agreements to acquire supplies and services, grants and cooperative agreements.
- M. Provides legal advice to the Office of Administration on clearances related to 10 CFR Part 10, "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance," and 10 CFR Part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material."
- N. Provides legal advice to the Chief Financial Officer on user fees and matters pertaining to the use of appropriated funds.
- O. Provides the agency with legal opinions and advice in connection with the administration of the Federal Advisory Committee Act, and performs other related duties as contained in 10 CFR Part 7, "Advisory Committees."

- P.** Provides the agency with legal opinions and advice in connection with the administration of the Paperwork Reduction Act, the Congressional Review Act, the Freedom of Information Act, and the Privacy Act of 1974, as amended, and performs other related duties as contained in 10 CFR Part 9, "Public Records," Subparts A and B.
- Q.** Provides legal advice to the Deputy Executive Director for Corporate Management on information technology matters.
- R.** Reviews and directs intellectual property law activities, including patent, trademark, copyright, and proprietary matters.
- S.** Provides the Commission with legal opinions and advice in connection with the administration of the Government in the Sunshine Act and performs other related duties as contained in 10 CFR Part 9, Subpart C, "Government in the Sunshine Act Regulations."
- T.** Represents the NRC staff in public hearings conducted in conjunction with reactor, materials, and waste licensing and in connection with enforcement actions.
- U.** Carries out responsibilities under the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. Sections 3801-812, and the Commission's implementing regulations in 10 CFR Part 13, "Program Fraud Civil Remedies."
- V.** Provides professional oversight of the regional counsel, who report directly to their respective Regional Administrators, communicates with regional counsel as point of contact between the regional offices and the Office of the General Counsel, provides advice to regional counsel as needed regarding their duties in providing or coordinating legal services to the regional offices in areas including reactor and materials licenses, inspection and enforcement activities, contracts, personnel and labor relations, Freedom of Information Act, the Privacy Act and ethics; and may request the assistance of regional counsel in the conduct of administrative hearings before the Commission, Atomic Safety and Licensing Boards, and presiding officers.
- W.** Performs any other functions assigned by the Commission.

### **III. DELEGATION OF AUTHORITY TO THE GENERAL COUNSEL**

The General Counsel is authorized and directed to take any action necessary to carry out the functions and responsibilities assigned to the General Counsel by this or other official directives or communications, subject to the limitations they may prescribe. Delegations of authority for specific actions and applicable limitations are contained in NRC management directives covering broad functional areas.

#### **IV. REDELEGATION OF AUTHORITY BY THE GENERAL COUNSEL**

- A.** The General Counsel may, except where expressly prohibited, redelegate to others authority delegated to the General Counsel by this or other official directives or communications, subject to the limitations stated below and to other stipulations the General Counsel may deem necessary.
- B.** The General Counsel shall send a memorandum specifying the redelegation to the Office of the Secretary, with a copy to the Executive Director for Operations and the Chief Human Capital Officer.
- C.** The General Counsel shall maintain a file of all redelegations.

#### **V. ORGANIZATIONAL STRUCTURE AND INTERNAL ASSIGNMENTS**

The Office of the General Counsel includes the Deputy General Counsel, the Solicitor, the Program Support Branch, the Associate General Counsel for Licensing and Regulation, and the Associate General Counsel for Hearings, Enforcement, and Administration. A link to the organization chart on the OGC web site and a statement of functions of the subdivisions of the office are presented in Handbook 9.7, Sections I and II.

#### **VI. REFERENCES**

##### ***Code of Federal Regulations***

5 CFR Chapter XVI, Subchapter B, "Government Ethics."

10 CFR 1.23, "Office of the General Counsel."

10 CFR Part 7, "Advisory Committees."

10 CFR Part 9, "Public Records."

10 CFR Part 10, "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance."

10 CFR Part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material."

10 CFR Part 13, "Program Fraud Civil Remedies."

28 CFR Part 50, "Statements of Policy."

48 CFR Chapter 20, "Nuclear Regulatory Commission Acquisition Regulation."

***Executive Order***

Executive Order 12731, "Principles of Ethical Conduct for Government Officers and Employees," October 17, 1990.

***United States Code***

Administrative Procedure Act (5 U.S.C. Chapters 5-8).

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

Energy Policy Act of 2005, Pub. L. 109-58.

Energy Reorganization Act of 1974, as amended (42 U.S.C. 5801 et seq.).

Ethics in Government Act of 1978, as amended (5 U.S.C. App., Section 101 et seq.).

National Environmental Policy Act (NEPA) (42 U.S.C. 432 et seq.).

Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 et seq.).

Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–12 et seq.).

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

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## **I. ORGANIZATION CHART**

The organization chart for the Office of the General Counsel (OGC) is available at [http://www.internal.nrc.gov/ogc/pdf/OGC\\_OrgChart.pdf](http://www.internal.nrc.gov/ogc/pdf/OGC_OrgChart.pdf).

## **II. DESCRIPTION OF FUNCTIONS**

### **A. General Counsel**

Supervises and directs the performance of all legal and administrative functions necessary to carry out the assigned responsibilities of the office, including the establishment of the internal organization and its policies and procedures, as required, to manage effectively the work of each division.

### **B. Deputy General Counsel**

1. Supervises and directs the performance of legal and administrative functions necessary to carry out the responsibilities of the office, including the establishment of the internal organization and its policies and procedures, as required, to manage effectively the work of each division, as directed by the General Counsel.
2. Acts for the General Counsel when the General Counsel is absent.

### **C. Solicitor**

1. Assists the General Counsel in his or her role as chief legal officer of and the legal advisor to NRC, with primary responsibility in matters involving the supervision of litigation in courts of law.
2. Represents NRC in Court of Appeals litigation and in conjunction with the Department of Justice in other Federal courts.
3. Provides counsel to NRC employees called to testify concerning the exercise of their official duties in cases in which NRC is not a party.
4. Advises the Commission on litigation implications of proposed actions; relatedly, coordinates with the Office of Commission Appellate Adjudication on significant or novel legal issues and on matters reasonably anticipated to be appealed to the Federal courts.



**D. Program Support Branch**

1. Provides program analysis and direction of program support activities for OGC.
2. Is responsible for office program development and evaluation in the areas of budgeting and resource utilization, personnel management, and organization planning and analysis.
3. Provides office services, including human resources, recruitment, training, information technology, equipment, space, correspondence control, mail and records control; and maintains the law library; and performs legislative reference service functions.

**E. Associate General Counsel for Hearings, Enforcement and Administration and the Associate General Counsel for Licensing and Regulation**

1. Participate with the General Counsel in directing and supervising all phases of the work within their purview.
2. The Associate General Counsels have full authority to make decisions and take final action on behalf of the General Counsel within the framework of the policies established by the General Counsel.

**F. Divisions in the Office of the General Counsel**

1. A division is headed by an Assistant General Counsel, who reports to an Associate General Counsel.
2. The Assistant General Counsels for Administration; High-Level Waste, Fuel Cycle and Nuclear Security; Legal Counsel, Legislation and Special Projects; Materials Litigation and Enforcement; New Reactor Programs; Operating Reactors; and Reactor and Materials Rulemaking assist the General Counsel and Associate General Counsels in developing legal policy in areas of assigned responsibility and in rendering appropriate legal assistance.
3. Each Assistant General Counsel has authority to take final action on all legal matters arising in the areas of assigned responsibility within the framework of the policies established by the General Counsel, except that all matters to be referred to the Commission or the Executive Director for Operations will be subject to review by the General Counsel, Deputy General Counsel, or an Associate General Counsel.

4. Each division provides interpretations of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and other sources of authority for NRC officials in matters relating to the respective functions and responsibilities of the division, and specifically—
  - (a) Assistant General Counsel for Administration
    - (i) Provides legal advice and assistance in the areas of interagency and international agreements, research and technical assistance contracts and other procurement matters, grants, patents, financial claims, tort claims, budgetary functions, appropriation matters, labor relations and employment, personnel and information security, equal employment opportunity, organizational conflicts of interest, and other administrative functions.
    - (ii) Acts as counsel for the agency in administrative proceedings before the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Civilian Board of Contract Appeals, bid protests at the Government Accountability Office, and before arbitrators, examiners, or administrative law judges presiding over proceedings arising under an applicable collective bargaining agreement, the NRC grievance procedures, 10 CFR Part 10, “Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance,” 10 CFR Part 11, “Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material,” or any other administrative proceedings arising out of the agency’s administrative functions.
  - (b) Assistant General Counsel for High-Level Waste, Fuel Cycle and Nuclear Security
    - (i) Provides legal advice on the disposal of high-level waste in a high-level waste repository.
    - (ii) Acts as counsel for the NRC staff in administrative proceedings before the Commission and the Atomic Safety and Licensing Boards, and presiding officers associated with the foregoing matters related to public health and safety, common defense and security, and environmental matters.
    - (iii) Provides legal advice with respect to statutory and regulatory requirements governing fuel cycle facilities, storage and transportation of spent nuclear fuel and high-level waste, and the security of nuclear facilities and materials.

- (c) Assistant General Counsel for Legal Counsel, Legislation and Special Projects
  - (i) Provides legal advice and assistance to the Commission in the review of adjudicatory decisions prepared by the Office of the General Counsel.
  - (ii) Represents the agency in Federal court litigation under the supervision of the Solicitor.
  - (iii) Coordinates with the Office of the Inspector General in matters involving the Program Fraud Civil Remedies Act of 1986.
  - (iv) Develops the Commission's legislative program, including the drafting of proposed legislation for the Commission consideration.
  - (v) Provides advice on the legal and policy implications for NRC of legislation sponsored by others and referred to the Commission for comment by Congress or the Office of Management and Budget (OMB).
  - (vi) Serves as liaison to OMB on legislative matters.
  - (vii) Provides advice to NRC employees on issues pertaining to Federal standard of conduct requirements and other conflict-of-interest matters and administers the agency's ethics program.
  - (viii) Provides advice on issues arising under administrative law, including the Government in the Sunshine Act, the Congressional Review Act, and the Federal Advisory Committee Act.
  - (ix) Handles special projects raising challenging legal issues.
  - (x) Provides legal advice and counseling on international activities and export and import licensing matters.
  - (xi) Provides legal advice and counseling to the Office of the Chief Financial Officer on user fee matters.
  - (xii) Provides legal advice and counseling to agency officials on electronic commerce and signature issues.
  - (xiii) Provides legal advice and assistance in the area of information law, including proprietary information and other intellectual property, the Freedom of Information Act, and the Privacy Act.
  - (xiv) Provides legal advice and counseling on development and implementation of Commission procedures.
  - (xv) Provides legal advice and counseling on questions of preemption under Federal law.

- (xvi) Provides legal advice on implementation of the Price-Anderson Act.
  - (xvii) Provides advice on the legal and policy implications for NRC of proposed executive orders or other agency regulations referred to the Commission for comment by OMB.
- (d) Assistant General Counsel for Materials Litigation and Enforcement
- (i) Provides legal advice concerning NRC inspection, investigations and enforcement activities, including notices of violation, civil penalties, and Orders.
  - (ii) Provides legal advice and assistance to all regional offices.
  - (iii) Coordinates and monitors the legal activities of regional counsels.
  - (iv) Acts as counsel for the NRC staff in public administrative proceedings before the Commission, Atomic Safety and Licensing Boards, and presiding officers, relating to the issuance of materials licenses, license amendments and license transfers, as well as enforcement actions involving facility or materials licenses, including the imposition of civil penalties and the modification, suspension, or revocation of licenses and other appropriate actions.
  - (v) Provides legal advice with respect to statutory and regulatory requirements for the licensing and regulation of nuclear reactor facilities and reactor operators, as needed.
- (e) Assistant General Counsel for New Reactor Programs
- (i) Provides legal advice with respect to statutory and regulatory requirements for the licensing of new nuclear reactor facilities, including issuance of early site permits, issuance of combined licenses and design certification rulemaking activities, and representation of the staff in related adjudications.
  - (ii) Acts as counsel for the NRC staff in any administrative proceedings before the Commission, Atomic Safety and Licensing Boards, and presiding officers associated with the foregoing actions related to public health and safety, common defense and security, and environmental matters.
  - (iii) Provides legal advice to the NRC staff (Office of Small Business and Civil Rights) regarding the legal sufficiency of the agency's processing of claims of discrimination under employment discrimination laws.
- (f) Assistant General Counsel for Operating Reactors
- (i) Provides legal advice with respect to statutory and regulatory requirements for the licensing and regulation of nuclear reactor facilities and reactor operators, including issuance and renewal of licenses, transfer of licenses,

amendments, backfitting of requirements, and generic communications relating to operating reactors.

- (ii) Acts as counsel for the NRC staff in any administrative proceedings associated with the foregoing actions related to public health and safety, common defense and security, and environmental matters.

(g) Assistant General Counsel for Reactor and Materials Rulemaking

- (i) Prepares and/or reviews NRC regulations and associated amendments and interprets those regulations for the NRC, personnel from other Federal and State agencies, licensees, and others associated with reactor regulation, non-fuel cycle materials regulations, agreement state issues, Indian Tribe issues, environmental matters and emergency planning matters.
- (ii) Provides legal advice and assistance to the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards.
- (iii) Initiates and drafts administrative procedures for licensing and regulation of the non-fuel cycle possession, use, and low-level waste disposal of nuclear material.
- (iv) Provides legal advice on NRC rulemaking matters, nuclear materials licensing, decommissioning, low-level waste management and disposal, matters involving Federal and State programs, matters involving relationships with Federal and international agencies, and administrative law and procedures.