

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-23-14</b>
<i>Volume 9:</i>	Organization and Functions	
<i>Approved By:</i>	Marian L. Zobler, General Counsel	
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<i>Issuing Office:</i>	Office of the General Counsel	
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<b>EXECUTIVE SUMMARY</b>		
<p>Management Directive 9.7, “Organization and Functions, Office of the General Counsel,” is revised to reflect the current organization and functions of the Office of the General Counsel. In addition, the NRC has made revisions to this MD as part of its efforts to use more inclusive language in its publications. These changes, which include changing “Chairman” to “Chair” in some instances, are purely editorial and do not affect the meaning of the guidance in this document.</p>		

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## I. 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 Nuclear Regulatory Commission (NRC) regulatory activities including, but not limited to, the interpretation of the Atomic Energy Act of 1954, the Energy Reorganization Act of 1974, the Reorganization Plan No. 1 of 1980, the Administrative Procedure Act, the National Environmental Policy Act, the Nuclear Waste Policy Act of 1982, the Nuclear Energy Innovation and Modernization Act (NEIMA), 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 provides legal review for the following, as appropriate, 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:
  - 1. Delegations of authority,
  - 2. Orders,
  - 3. Licenses,
  - 4. Other legal documents, including:
    - (a) Interagency agreements and contracts and
    - (b) Regulations, notices, and other documents that are to be published in the *Federal Register*.
- E. Provides legal advice to management officials, as appropriate, in the areas of employee relations, labor relations, equal employment opportunity, continuity of operations, and personnel.

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- 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 the 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 the NRC, and comments on proposed legislation submitted to the 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.** Provides agency comments on the following, in coordination with appropriate NRC officials:

    - 1. Proposed Executive Orders and
    - 2. Other interagency proposals, such as proposed Congressional testimony and responses to questions for the records and proposed rulemaking documents.
  - K.** Serves 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, regulations, and executive orders, principally the Ethics in Government Act of 1978, 5 U.S.C. Sections 7321-7326, 18 U.S.C. Sections 201-209, 5 CFR Parts 2634-2641 and 5801, and executive orders describing ethics commitments made by the Presidential appointees. As designated by the Chair, the General Counsel serves as the Designated Agency Ethics Official for the NRC.
  - L.** Provides the agency with legal advice 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.

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- 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, and performs other related duties as contained in 10 CFR Part 9, “Public Records,” Subparts A and B.
  - Q.** Provides legal advice on information technology matters to the Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration and Human Capital Programs.
  - 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, 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 (OGC), 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. Advises Incident Investigation Teams, as appropriate, in response to the request of the NRC's Office of Nuclear Security and Incident Response.
- X. 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**

- A. The OGC includes—
  1. The Deputy General Counsel for Licensing, Hearings, and Enforcement;

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2. The Deputy General Counsel for Legislation, Rulemaking, and Agency Administration;
  3. The Solicitor;
  4. The Program Support Branch;
  5. The Associate General Counsel for Hearings;
  6. Assistant General Counsels for—
    - (a) Reactor Programs;
    - (b) Security and Enforcement;
    - (c) Materials, Fuel Cycle, and Waste Programs;
    - (d) Labor, Employment, and Contract Law;
    - (e) Legislation, Ethics, and Administrative Law; and
    - (f) Rulemaking, Agreement States, and Fee Policy.

B. A link to the organization chart on the OGC website 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."

***Nuclear Regulatory Commission Documents***

NRC Management Directives website:

<https://www.nrc.gov/reading-rm/doc-collections/management-directives/volumes/vol-9.html>.

NRC Office of the General Counsel website:

<https://intranet.nrc.gov/ogc>.

NRC website on Organization of the Agency:

<http://www.nrc.gov/about-nrc/organization.html>.

***United States Code***

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

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

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

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

Ethics in Government Act of 1978, (5 U.S.C. §§ 13101–13146).

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

Nuclear Energy Innovation and Modernization Act (NEIMA) (Pub. L. No. 115-439, 132 Stat. 5565 (2019)).

Nuclear Waste Policy Act of 1982, (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)

**DH 9.7**

**ORGANIZATION AND FUNCTIONS,  
OFFICE OF THE GENERAL COUNSEL**

**DT-23-14**

*Volume 9:* Organization and Functions

*Approved By:* Marian L. Zobler, General Counsel

*Date Approved:* June 28, 2023

*Cert. Date:* N/A, for the latest version of any NRC directive and handbook, see the [online MD Catalog](#).

*Issuing Office:* Office of the General Counsel

*Contact Name:* Theresa Barczy

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## **I. ORGANIZATION CHART**

The organization chart for the Office of the General Counsel (OGC) is available at <https://intranet.nrc.gov/ogc>.

## **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 effectively manage the work of each division.

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

1. Supervise and direct 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. One of the Deputy General Counsels will act for the General Counsel when the General Counsel is absent.

### **C. Solicitor**

1. Assists the General Counsel in their role as chief legal officer of, and the legal advisor to the NRC, with primary responsibility in matters involving the supervision of litigation in courts of law.
2. Represents the 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 the 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. Develops and evaluates office programs 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; maintains the Legal Research Center; and performs legislative reference service functions.

**E. Associate General Counsel for Hearings**

1. Participates with the General Counsel in directing and supervising all phases of the work within their purview.
2. The Associate General Counsel has 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.
  - (a) When the Associate General Counsel for Hearings position is staffed, the Assistant General Counsels for the following divisions report to that position:
    - (i) Division of Reactor Programs,
    - (ii) Division of Security and Enforcement,
    - (iii) Division of Materials, Fuel Cycle, and Waste Programs.
  - (b) If the Associate General Counsel for Hearings position is not staffed, then the three divisions listed above report directly to the Deputy General Counsel for Licensing, Hearings, and Enforcement.
2. The Assistant General Counsel assist the General Counsel, Deputy General Counsel, and Associate General Counsel 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, a Deputy General Counsel, or Associate General Counsel.
4. Each division provides interpretations of the Atomic Energy Act of 1954, the Energy Reorganization Act of 1974, 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 Labor, Employment, and Contract Law

- (i) Provides legal advice in the areas of commercial contracts, interagency agreements and other procurement matters, grants and cooperative agreements, 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 before 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 Materials, Fuel Cycle, and Waste Programs
- (i) For matters concerning materials and fuel cycle licensing, acts as counsel for the NRC staff in administrative proceedings before the Commission, Atomic Safety and Licensing Boards, and presiding officers.
  - (ii) Provides legal advice with respect to statutory and regulatory requirements governing materials licensing, fuel cycle licensing, storage and transportation of spent nuclear fuel and high-level waste, accident tolerant fuel, decommissioning, materials license transfers, and the medical use of radioactive materials.
  - (iii) Provides legal advice on the disposal of high-level waste in consolidated interim storage facilities.
- (c) Assistant General Counsel for Legislation, Ethics, and Administrative Law
- (i) Provides legal advice in the area of interagency and international agreements as well as bankruptcy issues.
  - (ii) Provides legal advice to the Commission in the review of adjudicatory decisions prepared by the Office of the General Counsel.
  - (iii) Represents the agency in Federal court litigation under the supervision of the Solicitor.

- (iv) Coordinates with the Office of the Inspector General in matters involving the Program Fraud Civil Remedies Act of 1986.
  - (v) Assists in the development of the Commission's legislative program, including through the drafting of proposed legislation for the Commission's consideration.
  - (vi) Provides advice on the legal and policy implications for the NRC of legislation sponsored by others and referred to the Commission for comment by Congress or the Office of Management and Budget (OMB).
  - (vii) Serves as liaison to OMB on legislative matters.
  - (viii) 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.
  - (ix) Provides advice on issues arising under the Government in the Sunshine Act, the Congressional Review Act, the Copyright Act, and the Federal Advisory Committee Act.
  - (x) Handles special projects raising challenging legal issues.
  - (xi) Provides legal advice on international agreements, international activities, and export and import licensing matters.
  - (xii) Provides legal advice to agency officials on electronic signature issues.
  - (xiii) Provides legal advice in the area of information law, including the Freedom of Information Act and the Privacy Act.
  - (xiv) Provides legal advice on development and implementation of Commission procedures.
  - (xv) Provides legal advice 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 the NRC of proposed executive orders or other agency regulations referred to the Commission for comment by OMB.
- (d) Assistant General Counsel for Security and Enforcement
- (i) Provides legal advice concerning NRC allegation, inspection, investigation, and enforcement activities, including notices of violation, civil penalties, and Orders.

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- (ii) Acts as counsel for the NRC staff in administrative proceedings before the Commission, Atomic Safety and Licensing Boards, and presiding officers in connection with hearings on enforcement and related matters.
  - (iii) Provides legal advice with respect to statutory and regulatory requirements for the security of NRC-regulated facilities and materials.
  - (iv) 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.
- (e) Assistant General Counsel for Reactor Programs
- (i) For matters concerning nuclear reactor facility and reactor operator licensing, acts as counsel for the NRC staff in administrative proceedings before the Commission, Atomic Safety and Licensing Boards, and presiding officers.
  - (ii) 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, and generic communications relating to operating reactors.
  - (iii) 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.
- (f) Assistant General Counsel for Rulemaking, Agreement States, and Fee Policy
- (i) Provides legal advice on NRC rulemaking matters and administrative law and procedures.
  - (ii) Prepares and reviews all new or amended NRC regulations and policy statements pertinent to the licensing, construction, and operation, and security of nuclear facilities (including nuclear power plants and fuel facilities) and nuclear materials, and interprets those provisions for the NRC, personnel from other Federal and State agencies, licensees, and others.
  - (iii) Provides legal advice on matters involving the Agreement State Program, and relationships with States and Tribal governments.
  - (iv) Provides legal advice related to the annual fee rule, fee disputes, and fee waivers.
  - (v) Provides legal advice on backfitting and issue finality matters and maintains the Backfitting Community of Practice.