

# Rules and Regulations

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Chapter LXIV

RIN 3209-AA15

#### Supplemental Standards of Ethical Conduct for Employees of the Merit Systems Protection Board

**AGENCY:** Merit Systems Protection Board (MSPB).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Merit Systems Protection Board, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim regulation for employees of the MSPB that supplements the executive-branch-wide Standards of Ethical Conduct (Standards) issued by OGE. With certain exceptions, the supplemental regulation requires MSPB employees, except special Government employees, to obtain approval before engaging in outside employment.

**DATES:** This interim rule is effective June 11, 2007. Written comments must be received on or before July 9, 2007.

**ADDRESSES:** Send or deliver comments to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; fax: (202) 653-7130; e-mail: [mspb@mspb.gov](mailto:mspb@mspb.gov).

**FOR FURTHER INFORMATION CONTACT:** Rosa M. Koppel, Deputy General Counsel, fax: (202) 653-6203; email: [mspb@mspb.gov](mailto:mspb@mspb.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), which became effective on February 3, 1993. The Standards, as

corrected and amended, are codified at 5 CFR part 2635. The Standards set uniform ethical conduct standards applicable to all executive branch personnel.

Section 2635.105 of the Standards authorizes agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to properly implement their respective ethics programs. The MSPB, with OGE's concurrence, has determined that the following interim supplemental rule is necessary for successful implementation of its ethics program.

#### Analysis of the Regulations

##### Section 7401.101 General

Section 7401.101 explains that the regulations in part 7401 apply to employees of the MSPB and supplement the OGE Standards. The section also includes cross-references to other issuances applicable to MSPB employees, including the regulations concerning executive branch financial disclosure, financial interests, and employee responsibilities and conduct, as well as implementing MSPB guidance and procedures issued in accordance with the OGE Standards.

##### Section 7401.102 Prior Approval for Outside Employment

In accordance with 5 CFR 2635.803, the MSPB has determined it is necessary or desirable for the purpose of administering its ethics program to require its employees to obtain approval before engaging in outside employment or activities. This approval requirement will help to ensure that potential ethical problems are resolved before employees begin outside employment or activities that could involve a violation of applicable statutes and standards of conduct.

Section 7401.102(a) provides that an MSPB employee, other than a special Government employee, must obtain advance written approval from the employee's supervisor and the concurrence of the Designated Agency Ethics Official (DAEO) or alternate DAEO before engaging in any outside employment, except to the extent that the MSPB DAEO or alternate DAEO has issued an instruction or manual pursuant to paragraph (e) of this section exempting an activity or class of activities from this requirement.

Section 7401.102(b) broadly defines outside employment to cover any form of non-Federal employment or business relationship involving the provision of personal services, whether or not for compensation, other than in the discharge of official duties. It includes writing when done under an arrangement with another person or entity for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organizations, unless such activities are for compensation other than reimbursement of expenses, the organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E) and the employee will serve as officer or director of the organization, or the activities will involve the provision of consultative or professional services. Consultative services means the provision of personal services by an employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or similar facility. Professional services means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1) or involves a fiduciary relationship as defined in 5 CFR 2636.305(b)(2).

A note following paragraph (b) of § 7401.102 pertains to the special approval requirement set out in both 18 U.S.C. 203(d) and 205(e), respectively, for certain representational activities otherwise covered by the conflict of interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. The note explains that an employee who wishes to act as agent or attorney for, or otherwise represent his parents, spouse, child, or any person for whom, or any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters must obtain the approval required by law of the Government official responsible for the

employee's appointment in addition to the regulatory approval required in § 7401.102.

Section 7401.102(c) sets out the procedures for requesting prior approval to engage in outside employment initially, or within seven calendar days of a significant change in the nature or scope of the outside employment or the employee's official position.

Section 7401.102(d) sets out the standard to be applied by the employee's supervisor and the DAEO or alternate DAEO in acting on requests for prior approval of outside employment as broadly defined by § 7401.102(b). Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

Section 7401.102(e) provides that the MSPB DAEO or alternate DAEO can issue instructions or manual issuances governing the submission of requests for approval of outside employment, which may exempt categories of employment from the prior approval requirement of this section based on a determination that employment within those categories would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The instructions or issuances may include examples of outside employment that are permissible or impermissible consistent with this part and 5 CFR part 2635.

#### Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), the Merit Systems Protection Board finds good cause exists for waiving the general notice of proposed rulemaking and opportunity for public comment as to this interim rule. Notice and comment before the effective date are being waived because this rule concerns matters of agency organization, practice and procedure. However, written comments, which must be received by July 9, 2007 can be submitted on this interim rule; any such comments will be considered before this rule is adopted as final.

#### Executive Orders 12866 and 12988

Because this rule relates to MSPB personnel, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988.

#### Regulatory Flexibility Act

The MSPB has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. chapter 6, that this rulemaking will not have a significant economic impact on a substantial number of small

entities because it primarily affects MSPB employees.

#### Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply because this rulemaking does not contain information collection requirements subject to the approval of the Office of Management and Budget.

#### Congressional Review Act

The Merit Systems Protection Board has determined that this rule is not a rule as defined in 5 U.S.C. 804, and thus, does not require review by Congress.

#### List of Subjects in 5 CFR Part 7401

Conflict of interests, Government employees.

Dated: April 24, 2007.

Neil A.G. McPhie,

*Chairman, Merit Systems Protection Board.*

Approved: April 30, 2007.

Robert I. Cusick,

*Director, Office of Government Ethics.*

■ Accordingly, for the reasons set forth in the preamble, the Merit Systems Protection Board, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXIV, consisting of part 7401, to read as follows:

#### CHAPTER LXIV—MERIT SYSTEMS PROTECTION BOARD

#### PART 7401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE MERIT SYSTEMS PROTECTION BOARD

Sec.

7401.101 General.

7401.102 Prior approval for outside employment.

**Authority:** 5 U.S.C. 1204(h), 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159; 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

#### § 7401.101 General.

(a) **Purpose.** In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Merit Systems Protection Board (MSPB) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) **Cross-references.** In addition to 5 CFR part 2635 and this part, MSPB employees are required to comply with implementing guidance and procedures issued by the MSPB in accordance with 5 CFR 2635.105(c). MSPB employees are also subject to the regulations

concerning executive branch financial disclosure contained in 5 CFR part 2634, the regulations concerning executive branch financial interests contained in 5 CFR part 2640, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735.

#### § 7401.102 Prior approval for outside employment.

(a) **General requirement.** Before engaging in any outside employment, with or without compensation, an employee of the MSPB, other than a special Government employee, must obtain written approval from the employee's supervisor and the concurrence of the Designated Agency Ethics Official (DAEO) or the alternate DAEO, except to the extent that the MSPB DAEO or alternate DAEO has issued an instruction or manual pursuant to paragraph (e) of this section exempting an activity or class of activities from this requirement. Nonetheless, special Government employees remain subject to other statutory and regulatory provisions governing their outside activities, including 18 U.S.C. 203(c) and 205(c), as well as applicable provisions of 5 CFR part 2635.

(b) **Definition of employment.** For purposes of this section, employment means any form of non-Federal employment or business relationship involving the provision of personal services, whether or not for compensation. It includes, but is not limited to, services as an officer, director, employee, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. The definition does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless:

(1) The employee will receive compensation other than reimbursement of expenses;

(2) The organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E) and the employee will serve as officer or director of the organization; or

(3) The activities will involve the provision of consultative or professional services. *Consultative services* means the provision of personal services by an employee, including the rendering of advice or consultation, which requires

advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or similar facility. *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1) or involves a fiduciary relationship as defined in 5 CFR 2636.305(b)(2).

**Note to § 7401.102(b):** There is a special approval requirement set out in both 18 U.S.C. 203(d) and 205(e), respectively, for certain representational activities otherwise covered by the conflict of interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. Thus, an employee who wishes to act as agent or attorney for, or otherwise represent his parents, spouse, child, or any person for whom, or any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters must obtain the approval required by law of the Government official responsible for the employee's appointment in addition to the regulatory approval required in this section.

(c) *Procedure for requesting approval.* (1) The approval required by paragraph (a) of this section shall be requested by e-mail or other form of written correspondence in advance of engaging in outside employment as defined in paragraph (b) of this section.

(2) The request for approval to engage in outside employment or certain other activities shall set forth, at a minimum:

- (i) The name of the employer or organization;
- (ii) The nature of the legal activity or other work to be performed;
- (iii) The title of the position; and
- (iv) The estimated duration of the outside employment.

(3) Upon a significant change in the nature or scope of the outside employment or in the employee's official position within the MSPB, the employee must, within 7 calendar days of the change, submit a revised request for approval.

(d) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(e) *DAEO's and alternate DAEO's responsibilities.* The MSPB DAEO or alternate DAEO may issue instructions or manual issuances governing the submission of requests for approval of outside employment. The instructions or manual issuances may exempt categories of employment from the prior approval requirement of this section

based on a determination that employment within those categories of employment would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The DAEO or alternate DAEO may include in these instructions or issuances examples of outside employment that are permissible or impermissible consistent with this part and 5 CFR part 2635.

Dated: May 4, 2007.

**Bentley M. Roberts, Jr.,**

*Clerk of the Board.*

[FR Doc. E7-9035 Filed 5-9-07; 8:45 am]

**BILLING CODE 7400-01-P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AI13

#### List of Approved Spent Fuel Storage Casks: NAC-MPC Revision 5

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC International, Inc., NAC-Multi-Purpose Canister (MPC) system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 5 to Certificate of Compliance (CoC) Number 1025. Amendment No. 5 will modify the CoC by revising the Technical Specifications (TS) to incorporate changes to the reporting and monitoring requirements to allow for visual inspection of the air inlet and outlet vents instead of thermal monitoring, revising the TS to incorporate guidance from NRC Interim Staff Guidance-22 and replace all references to backfilling the cask with air to backfilling with inert gas, revising the CoC description to remove the requirement for tamper-indicating devices on the Vertical Concrete Casks, and including several editorial changes to improve the clarity of the documents associated with the NAC-MPC system, under the general provisions that govern licensing requirements for the independent storage of spent nuclear fuel, high level radioactive waste, and reactor-related greater than Class C waste.

**DATES:** The final rule is effective July 24, 2007, unless significant adverse comments are received by June 11, 2007. A significant adverse comment is a comment where the commenter

explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AI13) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comment will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to:* SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://rulemaking.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays [telephone (301) 415-1966].

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have