

NUCLEAR REGULATORY COMMISSION (NRC)

5 CFR Chapter XLVIII

10 CFR Part 0

**Supplemental Standards of Ethical Conduct for Employees of the
Nuclear Regulatory Commission**

RINs 3209-AA15 and 3150-AE60

59 FR 17457

April 13, 1994

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC), with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the Nuclear Regulatory Commission that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. These supplemental regulations address outside employment by NRC employees and ownership of securities by NRC employees, their spouses, and minor children. The NRC is also repealing its current regulations on those subjects, while adding a cross-reference to the new provisions and preserving certain separable financial interest exemptions.

EFFECTIVE DATE: Final rule effective July 12, 1994.

FOR FURTHER INFORMATION CONTACT: John Szabo, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-504-1606.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) for codification at 5 CFR part 2635. See *57 FR 35006-35067*, as corrected at *57 FR 48557* and *57 FR 53583*. These Standards, which took effect on February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

5 CFR 2635.105 authorizes executive agencies, with concurrence from OGE, to publish agency-specific supplemental regulations that are necessary to implement their ethics programs. The

Nuclear Regulatory Commission, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new chapter XLVIII of 5 CFR, consisting of part 5801, are necessary for successful implementation of the NRC's ethics program. By this notice, the Nuclear Regulatory Commission is also repealing the parts of its regulations which were preserved by 5 CFR part 2635 pending issuance of this supplemental regulation (see the additional OGE grace period extension at *59 FR 4779-4780*).

II. Analysis of the Regulations

Section 5801.101 General

Section 5801.101 explains that the regulations contained in the final rule apply to all NRC employees, including members of the Commission, and are supplemental to the executive branch-wide standards. Members and employees of the Nuclear Regulatory Commission also are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, and additional regulations regarding their conduct published by the agency in 10 CFR part 0.

Section 5801.102 Prohibited Securities

5 CFR 2635.403(a) authorizes agencies, by supplemental regulation, to prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees based on a determination that the acquisition or holding of such interests would cause reasonable persons to question the impartiality and objectivity with which agency programs are administered. Where it is necessary to the efficiency of the service, such prohibitions or restrictions may be extended to employees' spouses and minor children.

By 10 CFR 0.735-29, the Commission has long prohibited most of its employees, their spouses, minor children, and other members of their households, from holding stocks, bonds, and other securities issued by major entities in the commercial nuclear field. Section 5801.102 imposes very similar restrictions upon designated employees, their spouses and minor children, based upon the Commission's determination that these restrictions are necessary to maintain public confidence in the impartiality and objectivity with which the NRC executes its regulatory functions. The restrictions also will help to maintain public confidence that sensitive information relating to agency operations is not misused for private gain and will help accomplish the NRC's mission by avoiding widespread disqualification of employees from the performance of their official duties.

Section 5801.102 is narrower in scope than 10 CFR 0.735-29 in that it does not apply to all members of the employee's household. Consistent with *5 CFR 2635.403(a)* and *2635.403(c)(1)*, it restricts only the holdings of designated employees, their spouses, and minor children. The Commission has determined that application of the securities restrictions in § 5801.102 to spouses and minor children is necessary to the efficiency of the service. As evidenced by 10 CFR 0.735-29, the NRC believes it is important to the success of its mission for regulated entities and others affected by agency decisions to have this additional degree of assurance that agency decisions are not influenced by considerations of personal gain on the part of NRC personnel.

In addition to limiting the section's application to employees, their spouses, and minor children, the Commission has made other minor revisions to the restrictions as stated in 10 CFR 0.735-29. The categories of prohibited securities set forth in § 5801.102(b) have been revised to reflect the

new types of licenses established in 10 CFR part 52 and to include securities issued by State or local governments to finance low-level waste facilities. Section 5801.102(b)(8) also prohibits employees for the first time from owning securities issued by an energy or utility sector mutual fund that has invested more than 25 percent of the fund's assets in prohibited securities.

The time frames for complying with the security ownership regulations have also been modified. Under 10 CFR 0.735-29, NRC employees have had 30 days to comply after commencing employment or being promoted to a position covered by the security ownership prohibitions; one year to divest any security interest newly added to the agency's prohibited security list; and a "reasonable time" to dispose of securities inherited by gift. Consistent with 5 *CFR* 2635.403(d), the final rule provides a uniform 90-day period for divestiture, with extension available in cases of undue hardship.

The criteria in § 5801.102(e) for waiving the prohibition on holding a specific security have been modified to provide greater specificity. A criterion has been newly added to cover circumstances in which legal constraints prevent divestiture. One example of such a legal constraint would be the situation in which the prohibited security is held as part of the assets of a trust of which the employee is a beneficiary and where the trustee, who has sole authority to purchase and sell the assets, refuses the employee's request to sell the prohibited security.

The Commission has eliminated the requirement contained in 10 CFR 0.735-29 that employees who are subject to the security ownership restrictions certify each year that they are in compliance. Because the annual certifications have rarely revealed violations of the substantive restrictions, there is inadequate justification for continuing this requirement. However, to monitor compliance, the NRC will continue to require employees holding designated positions to certify compliance upon commencement of employment with the agency or upon promotion for the first time to a position covered by the security ownership restriction. Agency employees will also be required to report to the Office of the General Counsel in writing any prohibited securities obtained after the initial certification. This will permit the Office of the General Counsel to track required divestitures.

On the effective date of this regulation, the NRC will issue Management Directive 7.7 and its accompanying Handbook which lists those agency positions covered by the security ownership restrictions. The Handbook will also describe procedures for obtaining Certificates of Divestiture and waivers from the security ownership restrictions. Both the Management Directive and Handbook will be available at the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555-0001. Copies will also be available in each NRC Office.

Section 5801.103 Prior Approval for Outside Employment

5 *CFR* 2635.803 authorizes individual agencies, by supplemental regulation, to require agency employees to obtain approval before engaging in outside employment or other outside activities. The NRC has long had the prior approval requirement, set forth in 10 CFR 0.735-40. Section 5801.103 of the final rule retains the requirement that NRC employees obtain prior written approval before engaging in outside employment with entities that are regulated by or have business with the Commission. The NRC policy has been, and will continue to be, to encourage teaching, lecturing, or writing not prohibited by 5 CFR part 2635 or other applicable law.

The agency designees for approval of outside employment and internal agency procedures for obtaining the necessary approvals will be set forth in NRC Management Directive 7.8 and the

accompanying Handbook. This Directive and Handbook will be issued on the effective date of this regulation and will be available in the NRC Public Document Room and in each NRC Office.

III. Repeal of Superseded Portions of the NRC Conduct Regulations and Related Modifications

The final rule repeals the NRC conduct regulations 10 CFR 0.735-8, 0.735-29, and 0.735-40, effective on the same day that this rule takes effect. The information collection requirements of § 0.735-8 are no longer necessary. Section 0.735-29 will be superseded by the prohibitions on securities contained in 5 CFR 5801.102 and § 0.735-40 will be superseded by the requirements for prior approval of outside employment contained in 5 CFR 5801.103. These repeals, together with those effected by 58 FR 3825 and 29951, leave in 10 CFR part 0 only the waiver provisions of §§ 735-21 (a) and (b) which are preserved by 5 CFR 2635.402(d)(1). These paragraphs are redesignated § 0.735-2 (a) and (b) to follow a new § 0.735-1 which provides a cross-reference to the NRC's supplemental regulation and to the executive branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), the NRC finds good cause not to seek public comment on this rule. Such comment is unnecessary because the NRC is essentially repromulgating existing regulations in a different form, and the regulations pertain wholly to internal agency personnel matters that affect only NRC employees, their spouses, and minor children. To increase the likelihood of a smooth transition from the NRC's prior ethics rules to the new Government-wide standards of ethical conduct regulations, these rulemaking actions should take place as soon as possible. The rule and accompanying repeals will become effective 90 days after the date of publication in the **Federal Register**.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusions 10 CFR 51.22(c) (1) and (2). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The NRC is promulgating a supplemental regulation to OGE's Government-wide standards of conduct regulations in order to implement effectively the NRC's ethics program. This rule has no significant impact on health, safety or the environment. There is no substantial cost to licensees, the NRC, OGE, or other Federal agencies.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980, *5 U.S.C. 605(b)*, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects only NRC employees.

Backfit Analysis

The NRC has determined that the backfit rule, *10 CFR 50.109*, does not apply to this final rule and that a backfit analysis is not required for this final rule because these supplemental regulations do not involve any provisions which would impose backfits as defined in *10 CFR 50.109*.

List of Subjects

5 CFR Part 5801

Conflict of interests, Government employees.

10 CFR Part 0

Conflict of interests, Criminal penalties.

Dated at Rockville, Maryland, this 23rd day of March, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Approved: March 31, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Nuclear Regulatory Commission, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 10, chapter I, of the Code of Federal Regulations as follows:

TITLE 5-[AMENDED]

1. A new chapter XLVIII, consisting of part 5801, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER XLVIII-NUCLEAR REGULATORY COMMISSION

PART 5801-SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NUCLEAR REGULATORY COMMISSION

Sec.

5801.101 General.

5801.102 Prohibited securities.

5801.103 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 2201, 5841; 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, 2635.403, 2635.803.

§ 5801.101 -- General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to members and other employees of the Nuclear Regulatory Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, members and other employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634 and to additional regulations regarding their conduct contained in 10 CFR part 0.

§ 5801.102 -- Prohibited securities.

(a) *General prohibition.* No covered employee, and no spouse or minor child of a covered employee, shall own securities issued by an entity on the list described in paragraph (b) of this section.

(b) *Prohibited securities list.* Once a year, or on a more frequent basis, the Commission will publish and distribute to employees a list of entities whose securities a covered employee or the spouse or minor child of a covered employee may not own. The list shall consist of entities which are:

(1) Applicants for or holders of early site permits, construction permits, operating licenses, or combined construction permits and operating licenses for facilities which generate electric energy by means of a nuclear reactor;

(2) State or local governments, if the primary purpose of the security is to finance the construction or operation of a nuclear reactor or a low-level waste facility;

(3) Entities manufacturing or selling nuclear power or test reactors;

(4) Architectural-engineering companies providing services relating to a nuclear power reactor;

(5) Applicants for, or holders of, a certified standard design;

(6) Entities licensed or regulated by the Commission to mill, convert, enrich, fabricate, store, or dispose of source, byproduct, or special nuclear material, or applicants for such licenses that are designated by the Commission because they are or will be substantially engaged in such nuclear fuel cycle or disposal activities;

(7) The parent corporation of any subsidiary described in paragraphs (b)(1)-(b)(6) of this section; and

(8) An energy or utility sector investment fund which has more than 25% of its assets invested in securities issued by entities described in paragraphs (b)(1)-(b)(7) of this section.

(c) *Definitions.* For purposes of this section:

(1) A covered employee means:

(i) A member of the Commission;

(ii) The Inspector General of the NRC;

(iii) A member of the Senior Executive Service (SES);

(iv) An employee who holds a non-SES position above GG-15; and

(v) Any other employee, including a special Government employee, whose duties and responsibilities, as determined by the Commission or its designees, require application of the securities ownership prohibition contained in this section to ensure public confidence that NRC programs are conducted impartially and objectively. The positions of these employees are specified in NRC Management Handbook 7.7, which is available in the NRC Public Document Room; and

(2) The term "securities" includes all interests in debts or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(d) *Divestiture and reporting of prohibited securities.*-(1) *Newly covered employees.* Upon promotion or other appointment to a position subject to the securities prohibition of this section, a covered employee shall sign a certification:

(i) Identifying securities of an entity on the prohibited securities list which the employee, or the spouse or minor child of the employee, owns, or

(ii) Stating that the employee, or the spouse or minor child of the employee, does not own any prohibited securities.

Except as provided in paragraph (d)(4) of this section, the newly covered employee, or the spouse or minor child of the employee, shall divest prohibited securities within 90 days after appointment to the covered position.

(2) *Newly prohibited securities.* Within 30 days after publication of the prohibited securities list to which an entity's name has been added, a covered employee who owns, or whose spouse or minor child owns, prohibited securities shall make a written report of that ownership to the Office of the General Counsel. Except as provided in paragraph (d)(4) of this section, the covered employee, or the spouse or minor child of the covered employee, shall divest prohibited securities within 90 days after publication of the prohibited securities list.

(3) *Securities acquired without specific intent.* Within 30 days after a covered employee, or the spouse or minor child of a covered employee, acquires securities of an entity on the prohibited securities list as a result of marriage, inheritance, gift or otherwise without specific intent to acquire

the securities, the covered employee shall make a written report of the acquisition to the Office of the General Counsel. Except as provided in paragraph (d)(4) of this section, a covered employee, or the spouse or minor child of a covered employee, shall divest prohibited securities within 90 days after the date of acquisition.

(4) *Extension of period to divest.* Upon a showing of undue hardship, the Chairman of the Nuclear Regulatory Commission may extend the 90 day period for divestiture specified in paragraphs (d)(1) through (d)(3) of this section.

(5) *Disqualification pending divestiture.* Pending divestiture of prohibited securities, a covered employee must disqualify himself or herself, in accordance with 5 *CFR* 2635.402, from participation in particular matters which, as a result of continued ownership of the prohibited securities, would affect the financial interests of the employee, or those of the spouse or minor child of the employee. Disqualification is not required where a waiver described in 5 *CFR* 2635.402(d) applies. Procedures for obtaining individual waivers are contained in NRC Handbook 7.7, which is available in the NRC Public Document Room.

(6) *Tax treatment of gain on divested securities.* Where divestiture is required by this section, the covered employee (except a special Government employee) may be eligible to defer the tax consequences of divestiture under subpart J of 5 *CFR* part 2634, pursuant to procedures in NRC Handbook 7.7, which is available in the NRC Public Document Room.

(e) *Waivers.* (1) The Chairman may grant a waiver to permit a covered employee, or the spouse or minor child of a covered employee, to retain ownership of a security of an entity on the prohibited securities list upon a determination that the holding of the security is not inconsistent with 5 *CFR* part 2635 or otherwise prohibited by law, and that:

(i) Under the circumstances, application of the prohibition is not necessary to ensure confidence in the impartiality and objectivity with which NRC programs are administered;

(ii) Legal constraints prevent divestiture; or

(iii) For a special Government employee, divestiture would result in substantial financial hardship.

(2) Where a waiver has been granted under paragraph (e)(1) of this section, the covered employee must disqualify himself or herself, in accordance with 5 *CFR* 2635.402, from participation in particular matters which, as a result of continued ownership of the prohibited security, would affect the financial interests of the employee, or those of the spouse or minor child of the employee unless the employee has received a waiver described in 5 *CFR* 2635.402(d), pursuant to procedures in NRC Handbook 7.9, which is available in the NRC Public Document Room.

§ 5801.103 -- Prior approval for outside employment.

(a) An employee, other than a special Government employee, shall obtain written authorization before engaging in compensated outside employment with:

(1) A Commission licensee;

(2) An applicant for a Commission license;

(3) An organization directly engaged in activities in the commercial nuclear field;

- (4) A Commission contractor;
- (5) A Commission supplier;
- (6) An applicant for or holder of a license issued by a State pursuant to an agreement between the Commission and the State;
- (7) A trade association which represents clients concerning nuclear matters; or
- (8) A law firm or other organization which is participating in an NRC proceeding or which regularly represents itself or clients before the NRC.

(b) Requests for approval shall be submitted in writing to the agency designee specified in NRC Management Directive 7.8, which is available in the NRC Public Document Room, in accordance with procedures set forth in the accompanying NRC Handbook.

(c) Approval of outside employment shall be granted in writing only upon a determination by the agency designee that the proposed outside employment would not violate a Federal statute or regulation, including 5 CFR 2635.

(d) For purposes of this section, "outside employment" means any form of non-Federal employment, business relationship or activity, involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker.

10 CFR CHAPTER I-NUCLEAR REGULATORY COMMISSION

PART 0-CONDUCT OF EMPLOYEES

2. The authority citation for part 0 is revised to read as follows:

Authority: Secs. 25, 161, 68 Stat. 9925, 948, as amended (*42 U.S.C. 2035, 2201*); sec. 201, 88 Stat. 1242, as amended (*42 U.S.C. 5841*); 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 and 2635.402(d)(1). Section 0.735-2, also issued under *5 U.S.C. 552, 553*.

3. A new § 0.735-1 is added to read as follows:

§ 0.735-1 -- Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Nuclear Regulatory Commission (NRC) are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the NRC regulation at 5 CFR part 5801 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

4. Section 0.735-21 is redesignated as § 0.735-2 and the heading is revised to read thereof, "Exemptions for financial interests."

§ 0.735-8, 0.735-29 and 0.735-40 -- [Removed]

5. Sections 0.735-8, 0.735-29 and 0.735-40 are removed.