

July 30, 1993

MEMORANDUM FOR: William C. Parler
General Counsel

FROM: Samuel J. Chilk, Secretary /s/

SUBJECT: SECY-93-157 - SUPPLEMENTAL ETHICS
REGULATIONS AND IMPLEMENTING MANAGEMENT
DIRECTIVES

This is to advise you that the Commission (with all Commissioners agreeing) has approved the submittal of the proposed final rule to OGE subject to:

1. The considerations for granting exemptions from the security ownership restriction to the ACRS and ACNW members should be incorporated into Handbook 7.7 so that they are readily available.
2. The list of positions covered by the prohibited securities rule should include Commissioner's technical and legal assistants at GG-15 and below, and all attorneys in the Office of the Inspector General.
3. The argument in the draft Federal Register notice on behalf of the prohibited securities rule should be strengthened. Page 3 of the notice rightly says that the agency does not want a reasonable observer to suspect that an NRC decision affecting a large number of licensees was based in part on the effects the decision might have on the personal finances of NRC employees. However, the force of this argument is somewhat diluted by being made only in defense of the proposition that the rule should cover spouses and minor children. A potentially stronger defense of the prohibited securities rule appears on page 6 of the SECY paper, where OGC says,

Obviously, the fewer ties that advisory committee members have with the commercial nuclear industry, the fewer the conflict of interest problems that may arise and the greater the credibility of the committee as an objective, independent body.

SECY NOTE: THIS SRM, SECY-93-157, AND THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS FROM THE DATE OF THIS SRM.

This argument puts forward more reasons for the prohibition than the argument in the draft Federal Register, and, generalized to include all NRC employees covered by the prohibition, would make a useful addition to the notice.

4. Handbook 7.7 should be revised to give employees and the Chairman some guidance on how to determine whether application of the prohibition would be "inequitable". Neither the Federal Register notice nor the Handbook say anything more than that the Chairman may exempt an employee from the restriction when application of it would be "inequitable". While the very nature of "equity" makes it impossible to say in advance which applications of the restriction are "inequitable", the agency has sufficient experience in making exemption decisions to be able to say which kinds of exemption request are typically granted and which not. A brief written description of some typical cases would be helpful to employees.

5. With respect to the security ownership restrictions, 5 CFR section 5801. 102 (b)(7) should be revised to include not only energy sector mutual funds but also utility sector mutual funds. Conforming changes should be made as appropriate to Management Directive 7.7. The prohibited security list, which is published at least once each year by the agency, shall include a list of energy or utility sector investment funds that employees would be precluded from owning under the regulation. OGC shall make a reasonable effort to determine which funds should be listed. The list should include a statement that because of the changing portfolios of mutual funds, some of the funds listed may not be prohibited and that there may be others not listed that employees may not own under that regulation. Employees should be advised to review the prospectuses or annual reports of energy or utility sector funds and consult with the Office of the General Counsel, as appropriate. The list should also include OGC advice concerning (a) the responsibility, if any, of NRC employees to monitor the composition of their energy sector investment funds throughout the year and (b) what action they must take if the composition of the fund fails to meet the stated criteria at any time during the year.

The final rules should be forwarded for OGE concurrence and returned for Commission affirmation.

(OGC)

(SECY Suspense: TBD - depends upon completion of OGE review)

cc: The Chairman
Commissioner Rogers
Commissioner Remick
Commissioner de Planque
EDO
OIG
OCA
OCAA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)