

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

TN: DT-06-03

To: NRC Management Directives Custodians

Subject: Transmittal of Management Directive 7.7, "Security Ownership"

Purpose: Directive and Handbook 7.7 are being revised to (1) update Exhibit 1, the list of employee positions subject to the NRC prohibited securities restriction; (2) revise the policies for an employee's obtaining a Certificate of Divestiture to defer capital gains taxes from the sale of prohibited securities, in accordance with the recently revised Office of Government Ethics regulations; (3) substitute the most recent IRS Form 8824 for the current version in Exhibit 5; and (4) substitute a revised Security Ownership Certification (Exhibit 2), which only changes the OGC mailing address.

Office of Origin: Office of the General Counsel

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Volume: 7 Legal and Ethical Guidelines

Directive: 7.7 Security Ownership

OFFICE OF ADMINISTRATION

Availability:

Rules and Directives Branch
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Security Ownership

Directive

7.7



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U. S. Nuclear Regulatory Commission

Volume: 7 Legal and Ethical Guidelines

OGC

Security Ownership Directive 7.7

Policy (7.7-01)

It is the policy of the U.S. Nuclear Regulatory Commission to prohibit NRC employees with substantive regulatory responsibilities from owning stocks, bonds, and other security interests issued by major entities in the commercial nuclear field.

Objectives (7.7-02)

- To identify those employees who are subject to the security ownership restriction. (021)
- To describe procedures for obtaining Certificates of Divestiture (see Exhibits 3 and 4 of Handbook 7.7). (022)
- To describe procedures for obtaining an exemption from the security ownership restriction. (023)
- To describe procedures for certifying compliance with the security ownership rules. (024)
- To describe procedures for identifying entities that are to be added to, or deleted from, the published list of prohibited securities. (025)

Organizational Responsibilities and
Delegations of Authority
(7.7-03)

Chairman
(031)

- After consultation with the Office of the General Counsel (OGC), determines whether to waive the security ownership restriction or extend the period for divestiture in response to an employee request. (a)
- As appropriate, consults with the other Commissioners before acting upon waiver requests. (b)

General Counsel (GC)
(032)

- After consultation with the Executive Director for Operations (EDO), publishes a list of prohibited securities. (a)
- Recommends to the Chairman whether exemptions from the security ownership restriction should be granted. (b)
- Drafts exemptions for the Chairman's review. (c)
- Transmits requests for Certificates of Divestiture to the Office of Government Ethics (OGE). (d)
- Transmits to employees OGE determinations on requests for Certificates of Divestiture. (e)
- After consultation with the appropriate office director or regional administrator and any required EDO approval, updates and republishes, as needed, the list of positions contained in Exhibit 1 of Handbook 7.7 and may add or delete

Organizational Responsibilities and
Delegations of Authority
(7.7-03) (continued)

General Counsel (GC)
(032) (continued)

positions on that list based on a determination whether the employees holding the positions have substantive regulatory responsibilities. (f)

- May delegate the above authorities to deputy counselors in the Division of Legal Counsel, Legislation, and Special Projects, OGC. (g)

Executive Director for
Operations (EDO)
(033)

- Provides information to OGC on the entities that should be added to, or deleted from, the list of prohibited securities. (a)
- Approves recommendations from office directors reporting to the EDO, and regional administrators, after OGC consultation, for changes to the list of positions in Exhibit 1 of Handbook 7.7 subject to the prohibited securities restriction. (b)

Director, Office of Human Resources (HR)
(034)

Provides individuals subject to the security ownership restriction with copies of the list of prohibited securities and a security ownership certification (Exhibit 2 of Handbook 7.7) at the time an employment offer is made or upon promotion to a position subject to the restriction.

Organizational Responsibilities and
Delegations of Authority
(7.7-03) (continued)

Office Directors and
Regional Administrators
(035)

- For office directors reporting to the EDO and regional administrators, recommend to the EDO the positions of employees within their respective offices who meet the criteria for being subject to the security ownership restriction. (a)
- For office directors who report directly to the Chairman or the Commission, approve the positions of employees within their respective offices who meet the criteria for being subject to the security ownership restriction. (b)

Applicability
(7.7-04)

This directive applies to all employees and special Government employees subject to the security ownership restriction.

Definitions
(7.7-05)

Employee. An NRC employee, a member of the Commission, or a special Government employee (unless otherwise indicated).

Securities. 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,

Definitions

(7.7-05) (continued)

interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles, with respect thereto.

Special Government Employee. An NRC employee who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. The term includes NRC consultants, experts, and members of advisory committees but does not include a member of the uniformed services.

Handbook

(7.7-06)

Handbook 7.7 contains the following information:

- Specific categories of NRC positions subject to the security ownership restriction (a)
- A list of the categories of entities whose securities may not be owned by employees in NRC positions subject to the security ownership restriction (b)
- Procedures for obtaining Certificates of Divestiture (c)
- Procedures for obtaining exemptions from the security ownership restriction (d)
- Procedures for certifying compliance with the security ownership rules (e)

References

(7.7-07)

Code of Federal Regulations

Nuclear Regulatory Commission Supplemental Regulation:
“Prohibited Securities,” 5 CFR 5801.102.

References

(7.7-07) (continued)

“Executive Branch Financial Disclosure, Qualified Trusts, and
Certificates of Divestiture,” 5 CFR Part 2634, Subpart J.

“Standards of Ethical Conduct for Employees of the Executive
Branch,” 5 CFR Part 2635.

United States Code

Internal Revenue Code (26 U.S.C. 851).

Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.).

Security Ownership

Handbook

7.7



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Security Ownership

Individuals Subject to the Security Ownership Restriction (A)

The following employees are subject to the security ownership restriction: (1)

- Commissioners and the Inspector General. (a)
- Members of the Senior Executive Service, Senior Level System employees, and employees in the Offices of the Commissioners who file financial disclosure reports. (b)
- Members of the Advisory Committee on Nuclear Waste, the Advisory Committee on Reactor Safeguards, and the Atomic Safety and Licensing Board Panel. (c)
- All NRC employees at grade GG-15 and below with substantive regulatory responsibilities who hold a position that has been designated by Commission-level office directors or the Executive Director for Operations (EDO), after consultation with OGC. (Exhibit 1 is a list by office of each NRC position that has been so designated.) (d)

The spouses and minor children of employees listed in Sections (a) through (d) above are subject to the security ownership restriction. However, a spouse is not subject to the restriction if living separate and apart from the employee and there is an intention to end the marriage or to separate permanently. (2)

List of Prohibited Securities (B)

The Office of the General Counsel (OGC) will publish at least once each year a list of prohibited entities ("prohibited securities list"). Employees subject to the security ownership restriction, as well as their spouses or minor children, are prohibited from owning any

List of Prohibited Securities (B) (continued)

securities issued by entities on this list. However, they may own securities issued by any entity that is not on the prohibited securities list (although the employee may be precluded from providing advice on matters affecting the entity pursuant to 18 U.S.C. 208 and implementing regulations). Before publishing the prohibited securities list, OGC will request and receive recommendations from Commission-level office directors and the EDO on entities that should be added to or deleted from the list. The categories of entities on the prohibited securities list are identified in 5 CFR 5801.102(b) as follows:

- Applicants for, or holders of, early site permits, construction permits, operating licenses, or combined construction permits and operating licenses for facilities that generate electric energy by means of a nuclear reactor. (1)
- State or local governments, if the primary purpose of the security is to finance the construction or operations of a nuclear reactor or a low-level waste facility. (2)
- Entities manufacturing or selling nuclear power reactors or test reactors. (3)
- Architectural-engineering companies that are engaged in providing services relating to a nuclear power reactor. (4)
- Applicants for, or holders of, certified standard designs. (5)
- 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. (6)

List of Prohibited Securities (B) (continued)

- The parent corporation of any subsidiary described in categories (1) through (6) above. (7)
- An energy or utility sector investment fund in which more than 25 percent of its assets are invested in securities issued by entities described in categories (1) through (7) above. (8)

Certification of Compliance With the Security Ownership Restriction and Other Notifications (C)

Upon appointment or conversion to a position covered by the security ownership restriction, the employee will sign a certification (Exhibit 2) provided by the Office of Human Resources (HR) that neither the employee nor the employee's spouse or minor child owns a security interest issued by an entity that is found on the most recently issued prohibited securities list. If the employee or the employee's spouse or minor child owns any such interests, the employee will sign a certification identifying the security interests and describing divestiture plans. (1)

Each employee who is subject to the security ownership restriction and who involuntarily acquires a prohibited security after commencement of duty through such means as inheritance, marriage, or gift must notify an OGC deputy counselor in writing within 30 days after acquisition of the prohibited security. (2)

Each employee who is subject to the security ownership restriction who owns, or whose spouse or minor child owns, a security that was added to the prohibited securities list must notify an OGC deputy counselor in writing within 30 days after publication of the list. (3)

Divestiture of a Prohibited Security (D)

Any employee appointed or converted to a position that is subject to the security ownership restriction, or the employee's spouse or

Divestiture of a Prohibited Security (D) (continued)

minor child, shall divest the prohibited security within 90 days after appointment to that position. (1)

Any employee subject to the security ownership restriction, or the employee's spouse or minor child, who involuntarily acquires a prohibited security through such means as marriage, inheritance, or gift shall divest the prohibited security within 90 days after acquisition. (2)

Any employee subject to the security ownership restriction, or the spouse or minor child of that employee, who owns a security interest in an entity at the time the entity is added to the prohibited securities list published by OGC must divest the prohibited security within 90 days after addition of the entity to the list. (3)

In cases of unusual hardship, the Chairman may extend the 90-day period in which individuals subject to the security ownership restriction are required to divest the prohibited asset. (4)

Certificate of Divestiture (E)

An NRC employee can, under certain circumstances, defer the payment of capital gains taxes that would otherwise be due as a result of the employee's sale or divestiture of security interests required by NRC pursuant to 5 CFR 5801.102 by obtaining a Certificate of Divestiture (Exhibit 3) from the Office of Government Ethics (OGE). A special Government employee, however, cannot by law obtain a Certificate of Divestiture. (1)

NRC employees are to contact an OGC deputy counselor for information and advice on obtaining Certificates of Divestiture. (2)

Certificates of Divestiture can ordinarily be obtained in the following circumstances: (3)

Certificate of Divestiture (E) (continued)

- An employee newly appointed or converted to a position that is subject to the security ownership restriction, or the spouse or minor child of the employee, holds security interests in entities on the NRC's prohibited securities list at the time of appointment or conversion. (a)
- An employee, or the spouse or minor child of the employee, owns an interest in an entity at the time that it is added to the prohibited securities list. (b)
- An employee, or the spouse or minor child of the employee, involuntarily obtains prohibited securities through such means as marriage, inheritance, or gift. (c)
- An employee, or the spouse or minor child of the employee, must divest an interest in an entity not on the prohibited securities list because the employee is needed to work on matters affecting that entity. (d)
- A trustee holds prohibited securities in a trust in which an employee, or the spouse or minor child of the employee, has a beneficial interest in principal or income. (e)

To defer the tax consequences arising from capital gains that would otherwise be incurred as a result of the forced sale or divestiture of the prohibited security, **an employee must obtain a Certificate of Divestiture before the security interest is sold or divested.** (4)

To obtain a Certificate of Divestiture, an employee should submit to OGC a written request that contains the following information: (5)

- The employee's title and a general job description. (a)
- A description of the security interest, including the precise number of shares to be divested (e.g., 100 shares of X Company common stock). (b)

Certificate of Divestiture (E) (continued)

- An explanation of the facts and circumstances necessitating divestiture, including how and when the security was acquired. Examples include instances in which the employee inherited stock after starting employment with NRC or a new employee holds stock at commencement of employment. (See Exhibit 4.) The statement must also include an agreement to divest the prohibited securities no later than 3 months from the date the employee became subject to the restriction or obtained the prohibited securities, unless an extension is granted. (c)
- A copy of the employee's most recent financial disclosure report. An employee who is not required to file a financial disclosure report under Management Directive 7.6, "Public and Confidential Financial Disclosure Reports," must either submit a completed confidential financial disclosure report (OGE Form 450, which is available on the online forms icon) or a memorandum containing the information required to complete an OGE Form 450. (d)

The General Counsel or the Alternate Designated Agency Ethics Official will submit the request for a Certificate of Divestiture to OGE and will provide the employee with the certificate when it is received from OGE. (6)

To defer the tax consequences of a forced sale, an employee must, within 60 days from the date of sale of the security interest, invest the proceeds from the sale in "permitted property." This property includes the following: (7)

- Obligations of the United States Government. (a)
- A "diversified investment fund" (mutual fund or registered money market fund registered under the Investment Company Act of 1940 or unit investment trust regulated under 26 U.S.C. 851 that does not have a stated policy of concentrating its investments in any industry, business, single country [other than the United States] or bonds of a single State) that does

Certificate of Divestiture (E) (continued)

not devote its investments to particular or limited industrial, economic, or geographic sectors. (b)

An employee who obtains a Certificate of Divestiture should complete and attach IRS Form 8824, "Like-Kind Exchanges" (Exhibit 5), to his or her Federal income tax return for the year that the divestiture occurred. IRS Form 8824 notifies the Internal Revenue Service that the employee is not required to pay a capital gains tax for that year. (8)

Waiver Requests (F)

The Chairman may exempt an employee, or the employee's spouse or minor child, from the security ownership restriction upon a determination that the holding of the security is not inconsistent with 5 CFR Part 2635 or otherwise prohibited by law, and that—(1)

- Under the circumstances, application of the prohibition is not necessary to ensure confidence in the impartiality and objectivity with which NRC programs are administered; (a)
- Legal constraints prevent divestiture; or (b)
- For a special Government employee, divestiture would result in substantial financial hardship. (c)

The following are examples of situations warranting a waiver because of legal constraints preventing divestiture under paragraph (1)(b) above: (2)

- 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. (a)

Waiver Requests (F) (continued)

- The employee does not have title to the prohibited security for a specified period of time under the terms of the employment plan of a former employer. (In this case, the employee must divest the prohibited security within 90 days of taking title.) (b)

The following is an example of circumstances in which an exemption for a special Government employee will presumably be granted because of substantial financial hardship under paragraph (1)(c) above: A newly appointed member of an advisory committee holds prohibited securities at the time of appointment to the committee or subsequently acquires them involuntarily through marriage, gift, or inheritance. Because a special Government employee is ineligible to receive a Certificate of Divestiture to defer the payment of capital gains taxes, the sale of prohibited securities could result in a substantial financial hardship. Under these circumstances, newly appointed members granted a waiver could not acquire any more prohibited securities on their own accord after appointment to these committees. The Commission would also reserve the right to deny a waiver request if the holdings were of such a magnitude that the individual would be required to recuse himself or herself from a significant number of matters likely to come before the committee. (3)

The procedures to be followed in requesting a waiver of the security ownership prohibition (Section (1) above) are as follows: (4)

- An employee should submit a written statement to the General Counsel or an OGC deputy counselor describing the security interest, including the number of shares held, how the interest was obtained, and explaining why divestiture of the security interest, or disqualification from participating in a matter in which the employee holds a security interest, would be inequitable. (a)
- The General Counsel or an OGC deputy counselor will review the employee's request and prepare a written recommendation for the Chairman. (b)

Waiver Requests (F) (continued)

- The Chairman will provide the employee with a written determination either granting or denying the waiver request. (c)

The Chairman or the employee's office director or regional administrator may exempt an employee from the prohibition against participating personally and substantially in a particular matter affecting any entity that appears on the list of prohibited securities during the period the employee or the employee's spouse or minor child owns the security interest if the Chairman or the employee's office director or regional administrator determines that the employee's interest is not so substantial as to be deemed likely to affect the integrity of the services that NRC may expect from the employee. (5)

The procedures to be followed in requesting a waiver of the participation bar are as follows: (6)

- If, at the time the employee requests a waiver from the Chairman that would permit ownership of the prohibited security interest, the employee **knows** that he or she needs to participate in matters affecting the entity, the waiver request should also include a request to work on matters affecting the entity that issued the prohibited security. (a)
- If, after the Chairman has granted a waiver authorizing ownership of a prohibited security, the employee learns that he or she is needed to participate in matters affecting the entity, he or she should seek the necessary waiver from his or her office director or regional administrator. The office director or regional administrator shall consult with the General Counsel or an OGC deputy counselor before acting on the request. (b)

Exhibit 1
NRC Positions Subject to the Security
Ownership Restriction¹

Commissioners (1)

Inspector General (IG) (2)

Members of the Senior Executive Service (SES) (3)

Senior Level System (SLS) Employees (4)

Members of the Advisory Committee on Reactor Safeguards (ACRS) (5)

Members of the Advisory Committee on Nuclear Waste (ACNW) (6)

Administrative Judges and Administrative Law Judges
(Including part-time members) (7)

Offices of the Commissioners (8)
All positions, excluding support positions

Commission Staff Offices (9)

Office of Commission Appellate Adjudication (OCAA) (a)

Attorneys

Office of Congressional Affairs (OCA) (b)

Congressional Affairs Officers

Office of the General Counsel (OGC) (c)

Attorneys

¹Position titles are intended to be generic and all-inclusive without regard to seniority.

Exhibit 1 (continued)

Commission Staff Offices (9) (continued)

Office of International Programs (OIP) (d)

None

Office of Public Affairs (OPA) (e)

All positions, excluding support positions

Office of the Secretary of the Commission (SECY) (f)

- Technical Coordinators
- Information Management Specialist

Office of the Inspector General (OIG) (g)

- Auditors and Management Analysts
- Investigators
- Attorneys
- Director, Resource Management and Operations Support (RMOS)
- Senior Program Analyst (Personnel Officer)
- Senior Budget Analyst
- IT Specialist
- Technical Advisors

Exhibit 1 (continued)

Committees and Boards (10)

Advisory Committee on Reactor Safeguards (ACRS)/ Advisory Committee on Nuclear Waste (ACNW) (a)

Positions at GG-13 or above, excluding administrative or support positions

Atomic Safety and Licensing Board Panel (ASLBP) (b)

Attorneys

Office of the Chief Financial Officer (OCFO) (11)

- Senior License Fee Policy Analyst
- Chief, License Fee Team
- Chief, Accounts Receivable Team
- Deputy Director, Division of Planning, Budget, and Analysis
- Deputy Director, Division of Financial Services
- Deputy Director, Division of Financial Management

Offices That Report to the Executive Director for Operations (OEDO) (12)

Office of the Executive Director for Operations (a)

- Chief, Technical and Regional Programs Staff
- Coordinators

Office of Administration (ADM) (b)

None

Exhibit 1 (continued)

Offices That Report to the Executive Director for Operations (OEDO) (12)
(continued)

Office of Information Services (OIS) (c)

None

Office of Enforcement (OE) (d)

- Non-SES Supervisors
- Enforcement Specialists
- Allegations Specialists

Office of Human Resources (HR) (e)

None

Office of Investigations (OI) (f)

Investigators

Office of Nuclear Material Safety and Safeguards (NMSS) (g)

Positions at GG-13 or above, excluding administrative or support positions

Office of Nuclear Reactor Regulation (NRR) (h)

Positions at GG-13 or above, excluding administrative or support positions

Office of Nuclear Regulatory Research (RES) (i)

Positions at GG-13 or above, excluding administrative or support positions

Exhibit 1 (continued)

Offices That Report to the Executive Director for Operations (OEDO) (12) (continued)

Office Nuclear Security and Incident Response (NSIR) (j)

Positions at GG-13 or above, excluding administrative or support positions

Office of Small Business and Civil Rights (SBCR) (k)

None

Office of State and Tribal Programs (STP) (l)

Positions at GG-13 or above, excluding administrative or support positions

Regions (m)

- Positions at GG-12 or above, excluding administrative or support positions
- License Reviewers

Exhibit 2

Security Ownership Certification

CERTIFICATION OF COMPLIANCE WITH THE NRC'S SECURITY OWNERSHIP RESTRICTION UPON APPOINTMENT TO COVERED POSITION

I have been appointed, promoted or transferred to a position that is covered by the NRC's security ownership restriction. Therefore, I certify to one of the following:

_____ I do not own, nor does my spouse or my minor child own, any stocks, bonds, or other security interests issued by an entity on the Commission's current prohibited securities list.

_____ I own, or my spouse or my minor child owns, the following stocks, bonds, or other security interests that are on the Commission's current prohibited securities list.

Name of Prohibited Security

Quantity Owned (#of Shares)

I understand that, pursuant to 5 CFR 5801.102 (d)(1), these security interests must be divested within 90 days from the date that I assumed a position subject to the security ownership restriction. I also understand that I may not participate personally and substantially in particular matters affecting these entities until the divestiture of these securities has taken place.

I will notify the Office of the General Counsel in writing when the divestiture has been completed. (Send to: Ethics Counselor, OWFN, Mail Stop, O15 - D21).

PRINT NAME

NRC OFFICE

SIGNATURE

DATE

Exhibit 3
Sample Certificate of Divestiture Issued by
the Office of Government Ethics



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

CERTIFICATE OF DIVESTITURE

Certificate No. 23-

ELIGIBLE INDIVIDUAL:

DATE OF ISSUANCE:
Nuclear Regulatory Commission


DIVESTITURE PROPERTY:

100 common shares, EG&G

This Certificate of Divestiture is issued in accordance with section 1043 of the Internal Revenue Code of 1986 and 5 C.F.R. § 2634.1002 with respect to the specific property described above. I hereby determine that the divestiture of the described property is reasonably necessary to comply with 18 U.S.C. § 208, or other applicable Federal conflict of interest statutes, regulations, rules, or executive orders.

Note that section 1043 of the Internal Revenue Code and the rules of subpart J of 5 C.F.R. Part 2634 provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of Subpart J relate to the issuance of Certificates of Divestiture and the permitted property into which a reinvestment must be made during the 60-day period beginning on the date of such a sale in order for nonrecognition to be permitted. Such reinvestments are called rollovers, and the specific rules regarding the permitted properties into which a rollover may be made are found at 5 C.F.R. § 2634.1003. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service.

Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 (Part III of IRS Form 8824) must be followed by eligible persons wishing to make such an election.


Stephen D. Potts
Director

cc: DAEO, NRC

OGE-106
August 1992

Exhibit 4
Sample Employee Request for Certificate
of Divestiture

MEMORANDUM TO: Deputy Ethics Counselor
Office of the General Counsel

FROM: [EMPLOYEE NAME]
_____ Branch
Division of _____
Office of _____

SUBJECT: CERTIFICATE OF DIVESTITURE

I am a new NRC employee who began employment on [DATE]. I hold the position of [JOB TITLE and GENERAL JOB DESCRIPTION]. I own [EXACT NUMBER] of shares of [NAME OF PROHIBITED SECURITY] stock, which I owned before my NRC employment.

The [NAME OF PROHIBITED SECURITY] is on the list of entities whose security interests certain NRC employees are prohibited from owning. Under NRC regulations, I am required to divest myself of the [NAME OF PROHIBITED SECURITY] stock. I will divest myself of these securities no later than three months after the date of my appointment to the NRC, unless I receive an extension. Therefore, I am requesting a Certificate of Divestiture from the Office of Government Ethics to defer the capital gains tax consequences of the divestiture.

If you need further information, please contact me at [TELEPHONE NUMBER].

Exhibit 5

IRS Form 8824, "Like-Kind Exchanges"

Form 8824 <small>Department of the Treasury Internal Revenue Service</small>	Like-Kind Exchanges (and section 1043 conflict-of-interest sales) ► Attach to your tax return.	<small>OMB No. 1545-1190</small> 2004 <small>Attachment Sequence No. 109</small>
<small>Name(s) shown on tax return</small>		<small>Identifying number</small>
Part I Information on the Like-Kind Exchange		
<small>Note: If the property described on line 1 or line 2 is real or personal property located outside the United States, indicate the country.</small>		
1 Description of like-kind property given up ►		
2 Description of like-kind property received ►		
3 Date like-kind property given up was originally acquired (month, day, year)	3	/ /
4 Date you actually transferred your property to other party (month, day, year)	4	/ /
5 Date like-kind property you received was identified by written notice to another party (see instructions for 45-day written notice requirement) (month, day, year)	5	/ /
6 Date you actually received the like-kind property from other party (month, day, year) (see instructions)	6	/ /
7 Was the exchange of the property given up or received made with a related party, either directly or indirectly (such as through an intermediary) (see instructions)? If "Yes," complete Part II. If "No," go to Part III. <input type="checkbox"/> Yes <input type="checkbox"/> No		
Part II Related Party Exchange Information		
8 Name of related party	Relationship to you	Related party's identifying number
Address (no., street, and apt., room, or suite no., city or town, state, and ZIP code)		
9 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did the related party directly or indirectly (such as through an intermediary) sell or dispose of any part of the like-kind property received from you in the exchange? <input type="checkbox"/> Yes <input type="checkbox"/> No		
10 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did you sell or dispose of any part of the like-kind property you received? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<small>If both lines 9 and 10 are "No" and this is the year of the exchange, go to Part III. If both lines 9 and 10 are "No" and this is not the year of the exchange, stop here. If either line 9 or line 10 is "Yes," complete Part III and report on this year's tax return the deferred gain or (loss) from line 24 unless one of the exceptions on line 11 applies.</small>		
11 If one of the exceptions below applies to the disposition, check the applicable box:		
a <input type="checkbox"/> The disposition was after the death of either of the related parties.		
b <input type="checkbox"/> The disposition was an involuntary conversion, and the threat of conversion occurred after the exchange.		
c <input type="checkbox"/> You can establish to the satisfaction of the IRS that neither the exchange nor the disposition had tax avoidance as its principal purpose. If this box is checked, attach an explanation (see instructions).		
Part III Realized Gain or (Loss), Recognized Gain, and Basis of Like-Kind Property Received		
<small>Caution: If you transferred and received (a) more than one group of like-kind properties or (b) cash or other (not like-kind) property, see Reporting of multi-asset exchanges in the instructions.</small>		
<small>Note: Complete lines 12 through 14 only if you gave up property that was not like-kind. Otherwise, go to line 15.</small>		
12 Fair market value (FMV) of other property given up	12	
13 Adjusted basis of other property given up	13	
14 Gain or (loss) recognized on other property given up. Subtract line 13 from line 12. Report the gain or (loss) in the same manner as if the exchange had been a sale	14	
15 Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses you incurred (see instructions)	15	
16 FMV of like-kind property you received	16	
17 Add lines 15 and 16	17	
18 Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses not used on line 15 (see instructions)	18	
19 Realized gain or (loss). Subtract line 18 from line 17	19	
20 Enter the smaller of line 15 or line 19, but not less than zero	20	
21 Ordinary income under recapture rules. Enter here and on Form 4797, line 16 (see instructions)	21	
22 Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies (see instructions)	22	
23 Recognized gain. Add lines 21 and 22	23	
24 Deferred gain or (loss). Subtract line 23 from line 19. If a related party exchange, see instructions	24	
25 Basis of like-kind property received. Subtract line 15 from the sum of lines 18 and 23	25	
<small>For Paperwork Reduction Act Notice, see page 4.</small>		
<small>Cat. No. 12311A</small>		
<small>Form 8824 (2004)</small>		

Exhibit 5 (continued)

Form 8824 (2004)		Page 2
Name(s) shown on tax return. Do not enter name and social security number if shown on other side.		Your social security number : : : :
Part IV Deferral of Gain From Section 1043 Conflict-of-Interest Sales		
<i>Note: This part is to be used only by officers or employees of the executive branch of the Federal Government for reporting nonrecognition of gain under section 1043 on the sale of property to comply with the conflict-of-interest requirements. This part can be used only if the cost of the replacement property exceeds the basis of the divested property.</i>		
26	Enter the number from the upper right corner of your certificate of divestiture. (Do not attach a copy of your certificate. Keep the certificate with your records.)	- - - - -
27	Description of divested property ▶	
28	Description of replacement property ▶	
29	Date divested property was sold (month, day, year)	29 / /
30	Sales price of divested property (see instructions)	30
31	Basis of divested property	31
32	Realized gain. Subtract line 31 from line 30	
33	Cost of replacement property purchased within 60 days after date of sale	33
34	Subtract line 33 from line 30. If zero or less, enter -0-	
35	Ordinary income under recapture rules. Enter here and on Form 4797, line 10 (see instructions)	
36	Subtract line 35 from line 34. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797 (see instructions)	
37	Deferred gain. Subtract the sum of lines 35 and 36 from line 32	
38	Basis of replacement property. Subtract line 37 from line 33	

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Use Parts I, II, and III of Form 8824 to report each exchange of business or investment property for property of a like kind. Certain members of the executive branch of the Federal Government use Part IV to elect to defer gain on conflict-of-interest sales.

Multiple exchanges. If you made more than one like-kind exchange, you may file only a summary Form 8824 and attach your own statement showing all the information requested on Form 8824 for each exchange. Include your name and identifying number at the top of each page of the statement. On the summary Form 8824, enter only your name and identifying number, "Summary" on line 1, the total recognized gain from all exchanges on line 23, and the total basis of all like-kind property received on line 25.

When To File

If during the current tax year you transferred property to another party in a like-kind exchange, you must file Form 8824 with your tax return for that year. Also file Form 8824

for the 2 years following the year of a related party exchange (see the instructions for line 7 on page 3).

Like-Kind Exchanges

Generally, if you exchange business or investment property solely for business or investment property of a like kind, no gain or loss is recognized under section 1031. If, as part of the exchange, you also receive other (not like-kind) property or money, gain is recognized to the extent of the other property and money received, but a loss is not recognized.

Section 1031 does not apply to exchanges of inventory, stocks, bonds, notes, other securities or evidence of indebtedness, or certain other assets. See section 1031(a)(2). In addition, section 1031 does not apply to certain exchanges involving tax-exempt use property subject to a lease. See section 470(e)(4).

Like-kind property. Properties are of like kind if they are of the same nature or character, even if they differ in grade or quality. Personal properties of a like class are like-kind properties. However, livestock of different sexes are not like-kind properties. Also, personal property used predominantly in the United States and personal property used predominantly outside the United States are

not like-kind properties. See Pub. 544, Sales and Other Dispositions of Assets, for more details.

Real properties generally are of like kind, regardless of whether they are improved or unimproved. However, real property in the United States and real property outside the United States are not like-kind properties.

Deferred exchanges. A deferred exchange occurs when the property received in the exchange is received after the transfer of the property given up. For a deferred exchange to qualify as like-kind, you must comply with the 45-day written notice and receipt requirements explained in the instructions for lines 5 and 6.

Multi-asset exchanges. A multi-asset exchange involves the transfer and receipt of more than one group of like-kind properties. For example, an exchange of land, vehicles, and cash for land and vehicles is a multi-asset exchange. An exchange of land, vehicles, and cash for land only is not a multi-asset exchange. The transfer or receipt of multiple properties within one like-kind group is also a multi-asset exchange. Special rules apply when figuring the amount of gain recognized and your basis in properties received in a multi-asset exchange. For details, see Regulations section 1.1031(j)-1.

Form **8824** (2004)