

OVERVIEW OF THE PROHIBITED SECURITIES RULE AND CERTIFICATES OF DIVESTITURE

Certain NRC employees, as well as their spouses and minor children, are prohibited by regulation from owning securities issued by entities on a list published annually by the Office of the General Counsel (OGC). 5 C.F.R. 5801.102. The policies and procedures implementing this rule are in Management Directive 7.7, "Security Ownership."

The prohibited securities rule applies to all senior employees (i.e., Senior Executive Service, Senior Level Service, or above). It also covers employees at grade GG-15 or below with regulatory responsibilities described in Management Directive 7.7. Members of the NRC Advisory Committee on Reactor Safeguards and the Atomic Safety and Licensing Board Panel are also subject to this prohibition. (In addition to updating the Prohibited Securities List each year, OGC publishes annually a list of all positions that are subject to the prohibited securities rule.)

Employees who become subject to the prohibited securities rule upon initial employment or as a result of a subsequent assignment to a covered position must certify that they are in compliance with the rule. If an employee or the spouse or minor child of an employee covered by the prohibition owns any prohibited securities, the employee must notify OGC within 30 days of appointment.

The employee has 90 days from the date of appointment to divest those securities. The employee should inform OGC when the securities are divested. The NRC's Chairman may extend the 90-day deadline in cases of unusual hardship. The NRC's Chairman may also waive the divestiture requirement under very limited circumstances, such as where legal constraints prevent divestiture.

Employees can make these required notifications to OGC ethics officials through [Ethics Gateway](#). Employees can also contact an ethics official through Ethics Gateway if they have any questions about the prohibited securities rule or need assistance.

Capital Gains Taxes—Certificate of Divestiture

Employees required to sell prohibited securities to comply with the NRC's rule may owe capital gains taxes if the securities' sale price exceeds their tax basis. In this situation, obtaining a Certificate of Divestiture from the Office of Government Ethics (OGE) allows an employee to defer paying capital-gains taxes until a later date.¹

¹ Special Government employees are not eligible for a Certificate of Divestiture. Special Government employees are employees appointed to serve an agency for not more than 130 days during a 365-day period. NRC consultants and advisory committee members are generally appointed as Special Government employees.

If an employee knows that he or she will be selling prohibited securities for a loss, however, there is no reason to seek a Certificate of Divestiture (i.e., because the certificate only allows an employee to defer taxes on capital gains). There is also typically no reason to seek a Certificate of Divestiture if the securities are in a retirement account, such as a 401(k) plan or Individual Retirement Account, or other tax-deferred or tax-advantaged account, because an employee can usually roll over the proceeds of the sale into the purchase of another asset in the account, thereby avoiding capital-gains taxes on the sale. Employees should contact OGC if they have questions about whether they are eligible for a Certificate of Divestiture.

Employees who believe they may be eligible for a Certificate of Divestiture should submit a written request to OGC that contains the following information (a sample request can be found in Management Directive 7.7)—

- Employee title and general job description;
- Description of the security interest, including the precise number of shares to be divested (e.g., 105 shares of General Electric common stock);
- Explanation of the facts and circumstances requiring divestiture, including how and when the securities were acquired (e.g., “On July 11, 2012, I was appointed a Resident Inspector in Region II, a position subject to the NRC prohibited securities restriction. I own 250 shares of Exelon stock through purchase. None of these shares is in a retirement account.”)
- A statement of the employee’s understanding that he or she must sell these securities no later than 3 months from the date the employee became subject to the restriction or obtained the securities.

If OGC determines that the employee may be eligible for a Certificate of Divestiture, OGC will submit the employee’s request to OGE. In addition to the employee’s request, OGC will also attach the employee’s most recent financial disclosure report to the request (if the employee does not occupy a position requiring a financial disclosure report, OGC will provide the filer with an OGE Form 450 and instructions on how to complete it). If OGE decides to issue a Certificate of Divestiture, they will transmit the certificate to OGC, which will then be forwarded to the employee.

An employee should not sell any prohibited securities before obtaining OGE’s decision on the employee’s request for a Certificate of Divestiture, because by law OGE is only permitted to issue a certificate for property that has not yet been sold.

Regardless of whether OGE issues a Certificate of Divestiture, the employee will need to sell the prohibited securities. The employee should notify OGC promptly in writing when the prohibited securities are sold.

If OGE issued a Certificate of Divestiture, the employee must invest the proceeds in “permitted property” within 60 days of the sale date. “Permitted property” includes (1) obligations of the United States Government (e.g., Treasury bonds), and (2) “Diversified investment funds,” (open-

ended mutual funds or common trust funds that do not devote their investments to particular or limited industrial, economic, or geographic sectors).

To realize the tax benefits of the Certificate of Divestiture, the employee needs to complete the appropriate Internal Revenue Service (IRS) form (currently Form 8824, "Like-Kind Exchanges") and attach the form to the employee's federal income tax return for the year in which the prohibited securities were sold. In Part IV of the form, "Deferral of Gain From Section 1043 Conflict-of-Interest Sales," the employee provides information regarding the divested securities, the reinvested property, and the Certificate of Divestiture issued by OGE.

The above information is intended only as an overview of the rules applying to prohibited securities and Certificates of Divestiture. OGC is not providing tax advice, and we strongly encourage employees to contact a personal tax advisor if they have questions about the tax treatment of asset sales or the completion of tax forms.