

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

MD 7.7	SECURITY OWNERSHIP	DT-15-21
<i>Volume 7:</i>	Legal and Ethical Guidelines	
<i>Approved By:</i>	Margaret Doane, General Counsel	
<i>Date Approved:</i>	September 25, 2015	
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<i>Issuing Office:</i>	Office of the General Counsel	
<i>Contact Name:</i>	Lisa Clark 301-415-0612	
EXECUTIVE SUMMARY		
<p>Certain NRC staff members are subject to restrictions in security ownership. Management Directive and Handbook 7.7 inform the staff about the nature of the restrictions and how they apply to staff.</p> <p>This revision removes Exhibit 1, “NRC Positions Subject to the Security Ownership Restriction,” and Exhibit 5, IRS Form, “Like-Kind Exchanges,” from Handbook 7.7. This revision also updates and corrects citations and definitions.</p>		

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I. POLICY

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.

II. OBJECTIVES

- Identify those employees who are subject to the security ownership restriction.
- Describe procedures for obtaining Certificates of Divestiture (see Exhibits 2 and 3 of Handbook 7.7).
- Describe procedures for obtaining an exemption from the security ownership restriction or an extension of the deadline for divesting securities.
- Describe procedures for certifying compliance with the security ownership rules.
- Describe procedures for identifying entities that are to be added to, or deleted from, the published list of prohibited securities.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Chairman

1. 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.
2. As appropriate, consults with the other Commissioners before acting upon waiver requests.

B. General Counsel (GC)

1. After consultation with the Executive Director for Operations (EDO), publishes a list of prohibited securities.
2. Recommends to the Chairman whether exemptions from the security ownership restriction or extensions of the deadline for divestiture should be granted.
3. Drafts decisions on exemption and extension requests for the Chairman's review.
4. Transmits requests for Certificates of Divestiture to the Office of Government Ethics (OGE).
5. Transmits to employees OGE determinations on requests for Certificates of Divestiture.

6. After consultation with the appropriate office director or regional administrator, and after obtaining any required EDO approval, updates and republishes, as needed, the list of positions subject to the security ownership restriction (available on the NRC Ethics Web site at <http://drupal.nrc.gov/ogc/nrc-ethics>) and adds or deletes positions on that list after determining whether the employees holding the positions have substantive regulatory responsibilities.
7. May delegate the above authorities to deputy ethics counselors in the Division of Legal Counsel, Legislation, and Special Projects, OGC.

C. Executive Director for Operations (EDO)

1. Provides information to OGC on the entities that should be added to, or deleted from, the list of prohibited securities.
2. After consulting with OGC, approves recommendations from office directors reporting to the EDO, and from regional administrators for changes to the list of positions subject to the prohibited securities restriction available on the NRC Ethics Web site at <http://drupal.nrc.gov/ogc/nrc-ethics>.

D. Chief Human Capital Officer (CHCO)

Provides individuals subject to the security ownership restriction with copies of the list of prohibited securities and a security ownership certification (Exhibit 1 of Handbook 7.7) at the time an employment offer is made or upon promotion or conversion to a position subject to the restriction.

E. Office Directors and Regional Administrators

1. 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.
2. 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.

F. Inspector General (IG)

For employees reporting to the IG, identifies positions in the Office of the IG which meet the criteria for being subjected to the security ownership restriction.

IV. APPLICABILITY

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

V. DIRECTIVE HANDBOOK

Handbook 7.7 contains the following information:

1. Specific categories of NRC positions subject to the security ownership restriction
2. A list of the categories of entities whose securities may not be owned by employees in NRC positions subject to the security ownership restriction
3. Procedures for obtaining Certificates of Divestiture
4. Procedures for obtaining extensions of the deadline for divesting prohibited securities
5. Procedures for obtaining waivers from the security ownership restriction
6. Procedures for certifying compliance with the security ownership rules

VI. DEFINITIONS

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, 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.

VII. REFERENCES***Code of Federal Regulations***

5 CFR 5801.102, "Prohibited Securities."

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

Internal Revenue Service

Internal Revenue Service Forms and Publications Web Site:

<http://apps.irs.gov/app/picklist/list/formsPublications.html>.

Nuclear Regulatory Commission Documents

NRC Ethics Web Site:

<http://drupal.nrc.gov/ogc/nrc-ethics>.

United States Code

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

26 U.S.C. 851, "Internal Revenue Code."

U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)

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I. HANDBOOK

A. Individuals Subject to the Security Ownership Restriction

1. The following employees are subject to the security ownership restriction:
 - (a) Commissioners and the Inspector General.
 - (b) Members of the Senior Executive Service, Senior Level System employees, and employees in the Offices of the Commissioners who file financial disclosure reports.
 - (c) Members of the Advisory Committee on Reactor Safeguards and the Atomic Safety and Licensing Board Panel.
 - (d) All U.S. Nuclear Regulatory Commission 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 the Office of the General Counsel (OGC).
2. 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.

B. List of Prohibited Securities

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 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 Title 5 of the *Code of Federal Regulations* (CFR) 5801.102(b), “Prohibited Securities,” as follows:

1. 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.
2. 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.
3. Entities manufacturing or selling nuclear power reactors or test reactors.

4. Architectural-engineering companies that are engaged in providing services relating to a nuclear power reactor.
5. Applicants for, or holders of, certified standard designs.
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 categories one through six above.
8. 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 one through seven above.

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

1. Upon appointment or conversion to a position covered by the security ownership restriction, the employee will sign a certification (Exhibit 1) provided by the Office of the Chief Human Capital Officer (OCHCO) that neither the employee nor the employee's spouse or minor child owns a security interest issued by an entity 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. The employee will send the completed certification to an OGC deputy ethics counselor.
2. 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 ethics counselor in writing within 30 days after acquisition of the prohibited security.
3. Each employee 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 ethics counselor in writing within 30 days after publication of the list.

D. Divestiture of a Prohibited Security

1. Any employee appointed or converted to a position that is subject to the security ownership restriction, or the employee's spouse or minor child, shall divest any prohibited security within 90 days after appointment to that position.

2. 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.
3. 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.
4. 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.

E. Certificate of Divestiture

1. 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. To do so, the employee must obtain a Certificate of Divestiture (Exhibit 2) from the Office of Government Ethics (OGE) in accordance with 5 CFR 2634 Subpart J. A special Government employee, however, cannot by law obtain a Certificate of Divestiture.
2. NRC employees are to contact an OGC deputy ethics counselor for information and advice on obtaining Certificates of Divestiture.
3. Certificates of Divestiture can ordinarily be obtained under the following circumstances:
 - (a) 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.
 - (b) 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.
 - (c) An employee, or the spouse or minor child of the employee, involuntarily obtains prohibited securities through such means as marriage, inheritance, or gift.
 - (d) 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.
 - (e) 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.

4. 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.
5. To obtain a Certificate of Divestiture, an employee should submit to OGC a written request that contains the following information:
 - (a) The employee's title and a general job description.
 - (b) A description of the security interest, including the precise number of shares to be divested (e.g., 100 shares of X Company common stock), and the name(s) of any co-owners (e.g., security jointly owned with spouse).
 - (c) 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 3.) The statement must also include an agreement to divest (if jointly owned, all owners must express agreement) 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.
 - (d) 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) or a memorandum containing the information required to complete an OGE Form 450.
6. OGC 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.
7. To defer the tax consequences of a forced sale, an employee must, within 60 days from the date of sale of the security interest for which the certificate of divestiture was obtained, invest the proceeds from the sale in "permitted property." This property includes the following:
 - (a) Obligations of the United States Government.
 - (b) A "diversified investment fund." A diversified investment fund is a mutual fund or registered money market fund registered under the Investment Company Act of 1940, or a unit investment trust regulated under 26 U.S.C. 851, that does not have a stated policy of concentrating its investments in any single industry, business, or country (other than the United States), or in the bonds of a single state. In order to be a diversified investment fund, the fund must not devote its investments to particular or limited industrial, economic, or geographic sectors.

8. An employee who obtains a Certificate of Divestiture should complete and attach IRS Form 8824, "Like-Kind Exchanges," (available on the IRS Forms and Publications Web site at <http://apps.irs.gov/app/picklist/list/formsPublications.html>) 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.

F. Request to Extend the 90-Day Divestiture Period

1. The Chairman May Grant the Extension

The Chairman may extend the 90-day period for an employee or the employee's spouse or minor child to divest prohibited securities upon a showing of undue hardship.

2. Restrictions on Employee Participation if Divestiture Period is Extended

If the Chairman extends the 90-day divestiture period, during the period of the extension the employee must not personally and substantially participate in any particular matter affecting the financial interests of the entity issuing the prohibited securities.

G. Requesting a Waiver to Own Prohibited Securities

1. The Chairman May Grant the Waiver

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—

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

2. Examples of Situations Warranting the Waiver

- (a) The following are sample circumstances in which a waiver would be warranted because of legal constraints preventing divestiture [see paragraph I.G.1.(b) above]:
 - (i) 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 written request to sell the prohibited security.

-
- (ii) 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 are sample circumstances in which an exemption for a special Government employee will presumably be granted because of substantial financial hardship [see paragraph I.G.1(c) above]:
- (i) 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.
- (ii) If a waiver is granted, the newly appointed member cannot intentionally acquire additional prohibited securities after appointment to the committee. The Chairman reserves the right to deny a waiver request if the holdings are so extensive that the member would have to recuse himself or herself from a significant number of matters likely to come before the committee.
3. Procedures to Request Waiver of the Security Ownership Prohibition
- (a) To request a waiver of the security ownership prohibition (Section I.G. above)—
- (i) An employee should submit a written statement to the General Counsel or an OGC deputy ethics counselor describing the security interest, including—
- The number of shares held;
 - How the interest was obtained; and
 - An explanation as to why divestiture of the security interest, or disqualification from participating in a matter in which the employee holds a security interest, would be inequitable.
- (ii) The General Counsel or an OGC deputy ethics counselor will review the employee's request and prepare a written recommendation for the Chairman.
- (iii) The Chairman will provide the employee with a written determination either granting or denying the waiver request.
- (b) To request a waiver of the participation bar—
- (i) 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.

- (ii) 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.
- (iii) If it is determined that the employee's interest in the entity is not substantial enough to likely affect the integrity of the services that NRC may expect from the employee—
 - After consulting with OGC, the Chairman, the employee's office director, or the regional administrator may grant a waiver allowing an employee to participate personally and substantially in a particular matter affecting an entity on the prohibited securities list.
 - Such a waiver may be granted during the period that the employee, the employee's spouse, or the employee's minor child owns the security interest.
 - OGC will consult with the Office of Government Ethics prior to the granting of any waiver.

EXHIBITS

Exhibit 1 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.

<u>Name of Prohibited Security</u>	<u>Quantity Owned (#of Shares)</u>
_____	_____
_____	_____
_____	_____

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).

I further understand that the list of companies covered by the NRC's securities ownership restriction is updated annually. I will review these annual updates to ensure I do not own, and neither my spouse nor my minor child owns, securities in companies on the list. If so, I will divest the securities in accordance with 5 CFR 5801.102.

PRINT NAME

NRC OFFICE

SIGNATURE

DATE

Exhibit 2 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		
<p>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.</p>		
<p>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.</p>		
<p>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.</p>		
	 Stephen D. Potts Director	
cc: DAEO, NRC		
		OGE - 106 August 1997

Exhibit 3 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/jointly own with [Name of person] [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 90 days 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].