

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

MD 7.7	PROHIBITED SECURITIES	DT-22-10
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<i>Volume 7:</i>	Legal and Ethical Guidelines
<i>Approved By:</i>	Marian L. Zobler, General Counsel
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<i>Issuing Office:</i>	Office of the General Counsel Legislation, Ethics, and Administrative Law Division
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EXECUTIVE SUMMARY

Management Directive (MD) 7.7, “Prohibited Securities,” is revised to—

- Change the title from “Security Ownership,” to “Prohibited Securities,” to match the NRC’s supplemental ethics regulation, which is the basis for the MD;
- Address the recommendations in OIG-21-A-17, “Audit of the NRC’s Prohibited Security Ownership Process” (September 30, 2021), to clarify roles and responsibilities with respect to the collection and retention of Security Ownership Certification forms;
- Update the “Certificate of Divestiture” procedures to reflect changes in Office of Government Ethics regulations since the MD was last published;
- Remove Exhibits, which are now available on the NRC Ethics website;
- Provide an express reminder of the applicability of governmentwide conflict of interest rules to ownership of securities other than those on the NRC’s Prohibited Securities List; and
- Make minor editorial or nomenclature revisions.

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I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission (NRC), as reflected in Title 5 of the *Code of Federal Regulations* (CFR) 5801.102, "Prohibited Securities," to prohibit certain NRC employees from owning stocks, bonds, and other security interests issued by major entities in the commercial nuclear field, in order to ensure public confidence that NRC programs are conducted impartially and objectively.

II. OBJECTIVES

- Identify employees who are subject to the security ownership prohibition.
- Describe procedures for obtaining a Certificate of Divestiture.
- Describe procedures for obtaining a waiver from the security ownership prohibition, or an extension of the deadline for divesting prohibited securities.
- Describe procedures for the collection and retention of employee Security Ownership Certification forms.
- Describe procedures for updating and maintaining the list of prohibited securities.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Chairman

1. Designates the Designated Agency Ethics Official (DAEO).
2. After consultation with the Office of the General Counsel (OGC), determines whether to grant an employee request for a waiver of the security ownership prohibition or to grant an employee request for an extension of the period for divestiture.

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

B. General Counsel (GC)

1. As designated by the Chairman, serves as the DAEO.
2. After consultation with the Executive Director for Operations (EDO), publishes a list of prohibited securities that is available on the [NRC Ethics website](#).
3. Recommends to the Chairman whether an employee request for a waiver from the security ownership prohibition or an extension of the deadline for divestiture should be granted.
4. Drafts decisions on waiver and extension requests for the Chairman's review.
5. Transmits written employee requests for a Certificate of Divestiture to the Office of Government Ethics (OGE).
6. Transmits to employees OGE determinations on requests for a Certificate of Divestiture.
7. 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 prohibition, which are available on the [NRC Ethics website](#).
8. Retains employee Security Ownership Certification forms in accordance with applicable laws and policies.
9. May delegate the above responsibilities to deputy ethics officials in the Division of Legislation, Ethics, and Administrative Law, OGC, excluding the transmittal of an employee's written request for a Certificate of Divestiture to OGE.

C. Inspector General (IG)

For employees who report to the Inspector General (IG), identifies positions in the Office of the IG that meet the criteria for being subjected to the security ownership prohibition.

D. Executive Director for Operations (EDO)

1. Consults with OGC, upon request, concerning 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 security ownership prohibition available on the [NRC Ethics website](#).

E. Chief Human Capital Officer (CHCO)

1. Provides a new employee being appointed to a position subject to the security ownership prohibition with a Security Ownership Certification form.
2. Provides a current NRC employee being promoted or appointed to a position subject to the security ownership prohibition with a Security Ownership Certification.
3. Obtains a signed Security Ownership Certification form from the employee described above and transmits it to OGC deputy ethics officials for retention.

F. Office Directors and Regional Administrators

1. For office directors who report to the EDO and regional administrators, recommend positions of employees within their respective offices who meet the criteria for being subject to the security ownership prohibition.
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 prohibition.

IV. APPLICABILITY

The provisions of this management directive apply to all employees and special Government employees subject to the security ownership prohibition.

V. DIRECTIVE HANDBOOK

Handbook 7.7 contains guidelines for the NRC's Prohibited Securities program, including procedures for—

- A.** Identifying NRC positions subject to the security ownership prohibition;
- B.** Identifying entities whose securities may not be owned by employees in NRC positions subject to the security ownership prohibition;
- C.** Obtaining a Certificate of Divestiture;
- D.** Obtaining extensions of the deadline for divesting prohibited securities;
- E.** Obtaining waivers from the security ownership prohibition; and
- F.** Certifying compliance with the security ownership rules.

VI. DEFINITIONS

Employee

All NRC employees, including members of the Commission and the Inspector General, and special Government employees (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. This may include, among others, NRC consultants, experts, members of advisory committees, and summer interns.

VII. REFERENCES

Code of Federal Regulations

5 CFR 5801.102, "Prohibited Securities."

5 CFR Part 2634, "Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture."

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

5 CFR Part 2640, "Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Interest)."

Nuclear Regulatory Commission Documents

Management Directives—

3.53, "NRC Records and Document Management Program."

7.9, "Ethics Approvals and Waivers."

NRC Ethics Gateway:

<https://nrc.appiancloud.com/suite/sites/ethics-gateway>.

NRC Ethics website:

<https://intranet.nrc.gov/ogc/nrc-ethics>.

NRC's Prohibited Securities List website:

<https://www.nrc.gov/about-nrc/employment/ethics/list-prohibited-security.html>.

Office of the Inspector General OIG-21-A-17, "Audit of the NRC's Prohibited Security Ownership Process" ([ML21273A108](#)).

United States Code

Acts Affecting a Personal Financial Interest (18 U.S.C. 208).

Definition of Regulated Investment Company (26 U.S.C. 851).

Investment Company Act of 1940 (15 U.S.C. 80a-1-80a-64).

Sale of Property to Comply with Conflict-of-Interest Requirements (26 U.S.C. 1043).

U.S. Office of Government Ethics (OGE)

OGE "Request for a Certificate of Divestiture" form:

<https://oge.gov/Web/oge.nsf/Resources/Certificate+of+Divestiture+Request+Format>.

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

DH 7.7	PROHIBITED SECURITIES	DT-22-10
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<i>Contact Name:</i>	Eric Michel	

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I. INDIVIDUALS SUBJECT TO THE SECURITY OWNERSHIP PROHIBITION

- A.** The following employees are subject to the security ownership prohibition:
1. Commissioners and members of their staff, excluding support positions;
 2. The Inspector General;
 3. Members of the Senior Executive Service and Senior Level System employees;
 4. Members of the Advisory Committee on Reactor Safeguards and the Atomic Safety and Licensing Board Panel; and
 5. All U.S. Nuclear Regulatory Commission (NRC) employees at grade GG-15 and below who hold a position that has been designated as requiring application of the security ownership prohibition to ensure public confidence that NRC programs are conducted impartially and objectively.
- B.** Spouses and minor children of employees listed in Section I.A(1-5) of this handbook are also subject to the security ownership prohibition. However, a spouse is not subject to the prohibition if living separate and apart from the employee, and there is an intention to end the marriage or to separate permanently.
- C.** Whether an employee's child is a "minor child" is determined by the laws of the State in which the child resides.

II. LIST OF PROHIBITED SECURITIES

- A.** The Office of the General Counsel (OGC) publishes, at least once each year, a list of entities whose securities may not be owned by an employee subject to the security ownership prohibition, including the employee's spouse or minor children (the "Prohibited Securities List"). Updates to the Prohibited Securities List and the list of positions covered by the security ownership prohibition will be published by a Yellow Announcement, and these lists will also be made available on the [NRC Ethics website](#). Before publishing the Prohibited Securities List, OGC will request recommendations from appropriate offices on entities that should be added to or deleted from the list.

- B.** 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, Section II.B(1-6) of this handbook; and
 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, Section II.B(1-7) of this handbook.

III. OWNERSHIP OF OTHER SECURITIES

- A.** NRC employees are not outright prohibited from owning securities issued by entities other than those identified on the Prohibited Securities List. However, NRC employees must comply with Government laws and regulations concerning conflicts of interest (18 U.S.C. 208, “Acts Affecting a Personal Financial Interest”; 5 CFR 2635.402, “Disqualifying Financial Interests”), which prohibit employees from participating personally and substantially in particular matters that will directly and predictably affect their financial interests, including the financial interests of a spouse or minor children.
- B.** NRC employees must always remain cognizant of their financial interests and ensure their official duties do not involve or otherwise affect companies in which they own stock or other securities, regardless of whether that company is included on the Prohibited Securities List. NRC employees are strongly encouraged to consult an OGC deputy ethics official with any questions concerning conflicts of interest.

IV. CERTIFICATION OF COMPLIANCE WITH THE SECURITY OWNERSHIP PROHIBITION

- A.** The Office of the Chief Human Capital Officer (OCHCO) will provide a new NRC employee who is appointed to a position covered by the security ownership prohibition with a Security Ownership Certification form (available on the [NRC Ethics website](#)) at the time of appointment.
- B.** OCHCO will provide a current NRC employee being promoted or appointed to a position subject to the security ownership prohibition with a Security Ownership Certification form at the time of promotion or appointment. However, this is not required if the employee already occupies a position subject to the security ownership prohibition.
- C.** A new employee or a current NRC employee who is provided with a Security Ownership Certification form must promptly sign and return the form to OCHCO. By signing the Security Ownership Certification form, the employee will certify either—
1. The employee, including the employee's spouse or minor children if applicable, does not own any securities issued by an entity included on the Prohibited Securities List; or
 2. The employee, including the employee's spouse or minor children if applicable, does own securities issued by an entity included on the Prohibited Securities List, in which case the employee will identify the name of the prohibited securities and the quantity owned (i.e., number of shares). Such employees will also certify their understanding that they must either divest the securities within 90 days (see Section V. of this handbook) or obtain a waiver permitting the employee to continue ownership. Additionally, such employees will also certify their understanding that they may not participate personally and substantially in particular matters affecting the entity that issued the securities until divestiture has taken place (see Section VII. of this handbook).
- D.** OCHCO will provide signed Security Ownership Certification forms to OGC for retention. These forms will be retained by OGC in accordance with NRC Management Directive (MD) 3.53, "NRC Records and Document Management Program," and the applicable National Archives and Records Administration (NARA) general records schedule for employee ethics records.

V. DIVESTITURE OF A PROHIBITED SECURITY

- A.** An employee appointed or converted to a position that is subject to the security ownership prohibition shall divest any prohibited security, including those owned by a spouse or a minor child, within 90 days after appointment or conversion to that position.

- B.** An employee in a position subject to the security ownership prohibition, including the employee's spouse or a minor child, who acquires a prohibited security without specific intent (such as through marriage, inheritance, or gift) shall divest the prohibited security within 90 days after acquisition.
- C.** An employee in a position subject to the security ownership prohibition, including the employee's spouse or a minor child, who owns a security that is not prohibited at the time of purchase or acquisition, but is later added to the Prohibited Securities List, must divest the prohibited security within 90 days after publication of the Prohibited Securities List in which the security was first added to the list. Such employees must also notify an OGC deputy ethics official within 30 days of publication of the Prohibited Securities List.
- D.** Upon a showing of undue hardship, the Chairman may extend any of the 90-day periods described above. An employee seeking an extension of the 90-day divestiture period must contact an OGC deputy ethics official as soon as possible, and before the expiration of the divestiture period. 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.

VI. CERTIFICATE OF DIVESTITURE

- A.** An NRC employee can, under certain circumstances, defer the payment of capital gains taxes on securities sold in order to comply with 5 CFR 5801.102, "Prohibited Securities." To do so, the employee must obtain a Certificate of Divestiture from the Office of Government Ethics (OGE), in accordance with Subpart J of 5 CFR Part 2634, "Certificates of Divestiture," before selling the securities. OGE cannot issue a Certificate of Divestiture for property that has already been sold.
- B.** A Special Government employee (see Section VI, "Definitions," of this directive) is ineligible to obtain a Certificate of Divestiture (26 U.S.C. § 1043(b)).
- C.** An NRC employee must contact an OGC deputy ethics official for information and advice on obtaining a Certificate of Divestiture. Only the NRC Designated Agency Ethics Official (DAEO) may transmit to OGE, on behalf of the employee, a written request for a Certificate of Divestiture.
- D.** A Certificate of Divestiture can ordinarily be obtained under the following circumstances when an employee (including a spouse or minor child) is required to sell prohibited securities:
 - 1. A newly appointed employee, or an employee being promoted or converted to a position that is subject to the security ownership prohibition, owns prohibited securities at the time of appointment, promotion, or conversion.

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2. An employee owns securities that were not prohibited at the time of purchase or acquisition, but are then later added to the Prohibited Securities List after purchase or acquisition.
 3. An employee obtains prohibited securities without specific intent, such as through marriage, inheritance, or a gift.
- E.** An employee may also be eligible to obtain a Certificate of Divestiture if required to sell property other than prohibited securities, if divestiture is reasonably necessary to comply with the laws concerning conflict of interest.
- F.** A trustee holding property in a trust, including prohibited securities, is also eligible to obtain a Certificate of Divestiture if an employee, including a spouse or minor child, has a beneficial interest in the trust's principal or income.
- G.** To obtain a Certificate of Divestiture, an employee must submit a written request to an OGC deputy ethics official. The OGC deputy ethics official will confirm that the employee is eligible for a Certificate of Divestiture, and will then work with the employee to obtain sufficient information to prepare the [OGE "Request for a Certificate of Divestiture" form](#). Employees are encouraged to familiarize themselves with this form before requesting a Certificate of Divestiture so they understand the full extent of information that will be necessary to support the request. However, the OGC deputy ethics official, not the requesting employee, is responsible for preparing this request form on behalf of the employee.
- H.** After all necessary information is obtained from the requesting employee, the OGC deputy ethics official will prepare for the DAEO's signature the [OGE "Request for a Certificate of Divestiture" form](#) described in Section VI.G. of this handbook. The DAEO will forward the request to OGE on behalf of the employee.
- I.** If OGE issues the Certificate of Divestiture, OGC will forward the certificate to the employee.
- J.** In order to qualify for deferral of capital gains, the person obtaining the Certificate of Divestiture must, within 60 days of the sale of property pursuant to the certificate, reinvest the proceeds from the sale into permitted property. By law, permitted property includes—
1. Obligations of the United States Government; or
 2. A "diversified investment fund," which is a mutual fund or exchange-traded fund that is registered as a management company under the Investment Company Act of 1940, or a unit investment trust that is an investment company regulated under 26 U.S.C. 851, "Definition of Regulated Investment Company," that does not have a

stated policy of concentrating its investments in any single industry, business, or single country (other than the United States), or in the bonds of a single state.

- K.** An employee who elects to defer capital gains from the sale of securities or other property pursuant to certificate of divestiture must follow all applicable rules of the Internal Revenue Service (IRS) for reporting the sale of property and reinvestment of the proceeds into permitted property. OGC cannot provide an employee with individual guidance or advice on compliance with these rules. An employee is encouraged to consult a personal tax advisor or the IRS directly for such guidance.

VII. REQUESTING A WAIVER

A. Authorizing Official

The Chairman may grant a waiver to permit an employee, or the employee's spouse or minor child, to retain ownership of a prohibited security upon a determination that continued ownership is not inconsistent with 5 CFR Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," 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;
2. Legal constraints prevent divestiture; or
3. For a Special Government employee, divestiture would result in substantial financial hardship.

B. Examples of Situations Warranting a Waiver

The following are illustrative examples in which a waiver may be warranted because legal constraints prevent divestiture:

1. The employee, or the employee's spouse or minor child, is the beneficiary of a trust that contains a prohibited security, and the trustee, who has sole authority to purchase and sell the assets, has refused the employee's request to sell the prohibited security.
2. The employee, or the employee's spouse, does not have title to the prohibited security for a specified period of time under the terms of the employment plan of an employer or former employer.
3. The employee, or the employee's spouse, has stock options through an employer or former employer that cannot be exercised for a specific period of time, or can only be exercised during certain established timeframes.

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- C.** An employee who is granted a waiver from the security ownership prohibition on the basis that legal constraints prevent divestiture will be required, as a condition of the waiver, to divest the prohibited security interest within 90 days of obtaining the legal capacity to do so (i.e., when the legal constraints preventing divestiture no longer exist).
- D.** By law, a Special Government employee is ineligible to receive a Certificate of Divestiture (Section VI.G. of this handbook). A Special Government employee subject to the security ownership prohibition, such as a member of the Advisory Committee on Reactor Safeguards, is uniquely eligible to obtain a waiver of the ownership prohibition where divestiture would result in substantial financial hardship, such as tax consequences associated with substantial capital gains. However, such waivers still will only be granted if it is determined that continued ownership is not inconsistent with 5 CFR Part 2635 or otherwise prohibited by law (for example, if recusal from particular matters that would directly and predictably affect the financial interests of the entity that issued the security is feasible). The Chairman reserves the right to deny a waiver request if the holdings are so extensive that the member would have to recuse themselves from a significant number of matters likely to come before the committee.
- E. Procedures to Request Waiver of the Security Ownership Prohibition**
1. To request a waiver of the security ownership prohibition:
 - (a) An employee should submit a written statement to an OGC deputy ethics official describing the security interest, including—
 - (i) The number of shares held;
 - (ii) How the interest was obtained; and
 - (iii) An explanation as to why divestiture of the security interest is not feasible or would be inequitable.
 - (b) The OGC deputy ethics official will review the employee's request and prepare a written recommendation for the Chairman. The OGC deputy ethics official may also request the employee to provide additional relevant information in support of the waiver request, as necessary. The OGC deputy ethics official should also determine, as part of the written recommendation, whether the employee will need to seek an additional waiver from the conflict of interest statute, 18 U.S.C. § 208 (see Section VII.E.2 of this handbook below).
 - (c) The Chairman will make a written determination either granting or denying the waiver request. OGC will provide the employee with the Chairman's written determination.

2. If an employee obtains a prohibited securities waiver, the waiver will ordinarily include a condition requiring the employee's recusal from any particular matters that, as a result of continued ownership of the prohibited security, would affect the employee's financial interests or the interests of the employee's spouse or minor child. However, if recusal from all such matters is not feasible, then in appropriate circumstances the employee may also be eligible to obtain an additional waiver from the conflict of interest statute, 18 U.S.C. § 208, which may permit the employee to participate in such matters with or without limitations. The process for seeking and obtaining this additional waiver is described in MD 7.9, "Ethics Approvals and Waivers," and can be granted after the agency consults with OGE and determines that the financial interest resulting from continued ownership of the prohibited security is not so substantial such that it is unlikely to affect the integrity of the employee's official duties. Additionally, depending on the nature of the security interest and the value of the employee's interest, the employee may be eligible for an exemption described in Subpart B or 5 CFR, Part 2640, "Exemptions Pursuant to 18 U.S.C. 208(b)(2)," which may allow the employee to participate in particular matters involving the financial interest without the need for any additional waiver. An employee must consult with an OGC deputy ethics official if they believe that recusal under the terms of a prohibited security waiver is not feasible.