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DEPARTMENT OF THE INTERIOR

5 CFR Chapter XXV

43 CFR Part 20

RINs 1090–AA38, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior

AGENCY: Department of the Interior (Department).

ACTION: Interim rule, with request for comments.

SUMMARY: The Department of the Interior, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule for the employees of the Department that supplements the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. This interim rule is a necessary supplement to the Standards because it addresses ethical issues unique to the Department. The interim rule designates separate agency components for purposes of identifying prohibited sources of gifts and applying the restrictions on compensated outside teaching, speaking and writing that relate to an employee's official duties; provides cross-references to certain statutory prohibitions against the holding by some Department employees of certain financial and other interests, and regulations implementing those prohibitions; prohibits certain financial interests and outside employment; and requires employees to obtain prior approval for certain outside employment. The Department is also revising its employee responsibilities and conduct regulations by adding a cross-reference to ethics and other conduct-related regulations, removing superseded or redundant provisions, and redesignating the provisions remaining in the regulation.

DATES: This rule is effective on October 16, 1997. Comments on the interim rule must be received on or before December 15, 1997.

ADDRESSES: Send comments to the Department Ethics Office, Department of the Interior, 1849 C Street, NW., Room 5013, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gabe Paone or Mason Tsai, Department Ethics Office, 202–208–5916; Internet E-mail address: mason_tsai@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965–42970 (as corrected at 61 FR 48733), 61 FR 50689–50691 (interim rule revisions adopted as final at 62 FR 12531), and 62 FR 48746–48748, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct for executive branch personnel.

On June 10, 1993, the Department issued a final rule which removed certain provisions of its employee responsibilities and conduct regulations at 43 CFR part 20 that had been superseded by 5 CFR part 2635 or by OGE's executive branch financial disclosure regulations at 5 CFR part 2634. See 58 FR 32446–32449. Along with portions of 43 CFR part 20 that the Department retained under authority separate from 5 CFR parts 2634 and 2635, the Department retained in 43 CFR part 20 provisions regarding prohibited financial interests and outside employment which were temporarily preserved, respectively, by the notes following 5 CFR 2635.403(a) and 2635.803, as extended at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952.

The Standards, at 5 CFR 2635.105, authorize executive branch agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. The Department, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new chapter XXV of 5 CFR, are necessary to the success of its ethics program. Also, upon issuance of the supplemental regulation, the Department is removing those remaining provisions in 43 CFR part 20 that now have been superseded, and other provisions as explained in part III of this supplementary information.

II. Analysis of the Regulations

Section 3501.101 General

Section 3501.101(a) provides that the regulations contained in the interim rule apply to employees of the Department of the Interior and supplement the executive branch-wide Standards in 5 CFR part 2635. This section also notes that employees of the Department are subject to the responsibilities and conduct regulations for executive branch employees, at 5 CFR part 735; the executive branch financial disclosure regulations, at 5 CFR 2634; and the Department's regulations regarding employee responsibilities and conduct, at 43 CFR part 20.

Section 3501.101(b) includes definitions for various terms used in the regulation, and provides information about ethics program responsibilities within the Department.

Section 3501.101(c) authorizes the Designated Agency Ethics Official (DAEO), or the Ethics Counselor for each major operating component of the Department, to issue explanatory guidance and implementing procedures to assist the employees in the Department to understand and comply with the executive branch-wide Standards and these supplemental regulations. In accordance with 5 CFR 2635.105(c), these issuances themselves will neither supplement nor amend the executive branch-wide Standards in 5 CFR part 2635 or this interim rule.

Section 3501.102 Designation of Separate Agency Components

The Standards, at 5 CFR 2635.202(a), prohibit an employee from soliciting or accepting a gift from a prohibited source. A prohibited source is defined by 5 CFR 2635.203(d) to include a person who has a specific relationship with an employee's agency. For purposes of identifying an employee's agency, 5 CFR 2635.203(a) authorizes an executive department, by supplemental regulation, to designate as separate

agencies components of the department that exercise distinct and separate functions. Designations made pursuant to § 2635.203(a) are used also for purposes of applying the restrictions in 5 CFR 2635.807(a) on receipt of compensation for teaching, speaking or writing related to an employee's official duties. Since the Department is establishing in § 3501.105(c) a prior approval requirement for outside employment with a prohibited source, the designations in this section will also be used for purposes of applying the supplemental regulation's requirement for prior approval of outside employment.

Section 3501.102(a) of the interim rule designates ten of the Department's bureaus and offices as separate agencies. The Department has determined that each of bureaus and offices exercises separate and distinct functions. As further amplified in § 3501.102(c), employees of the Department not employed in one of the ten separate agency components are deemed to be employees of the entire Department, which for those employees includes any parts of the Department that are not included in the ten separate agency components as well as those parts that are so included.

Examples at the end of this section illustrate how the separate agency designations are applied.

Section 3501.103 Prohibited Interests in Federal Lands

Section 3501.103(a) contains cross-references to the statutory prohibitions at 43 U.S.C. 11 and 31(a), which provide respectively that "[t]he officers, clerks, and employees of the Bureau of Land Management are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land," and "[t]he Director and members of the United States Geological Survey shall have no personal or private interests in the lands or mineral wealth of the region under survey * * *." The Department's responsibilities and conduct rules, at 43 CFR 20.735–23(b)(1) (being partially retained and redesignated by this interim rule-making as 43 CFR 20.401), implement these long standing statutory prohibitions and also are cross-referenced in § 3501.103(a).

The prohibitions at 43 U.S.C. 11 and 31(a) has been extended by the Department's regulations in 43 CFR part 20 to employees of the Minerals Management Service (MMS) and certain other Department employees. The statutory prohibitions' regulatory extension to MMS employees followed the establishment of MMS in October 1982. The MMS was initially staffed with natural resource employees from the United States Geological Survey (USGS) and the Bureau of Land Management (BLM). At the time, many of the new MMS employees were to be performing duties regarding Federal lands similar to those for which they were responsible when they were USGS OR BLM employees. This created an ethics concern for MMS and the Department, since the MMS employees transferring from USGS and BLM would no longer be covered by the organic prohibitions of their former bureaus. To address this concern the Department decided to extend, in its employee responsibilities and conduct regulations at 43 CFR part 20, those organic prohibitions to MMS employees.

The other Department employees to whom the prohibitions at 43 U.S.C. 11 and 31(a) were extended in 43 CFR part 20 were the Secretary and employees "in pay grades equivalent to GS–16 and above or who are in merit pay positions as described in 5 U.S.C. 5401(b)(1)" in "the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer." The Department determined that the prohibitions needed to be extended to those additional personnel because they were positions which could substantially influence the actions and decisions made by employees of USGS, BLM, or MMS.

Under 5 CFR 2635.403(a), an agency may, by supplemental regulation, prohibit or restrict the acquisition or holding by its employees of financial interests that the agency determines would cause a reasonable person to question the impartiality or objectivity with which agency programs are administered. The Department has made this determination with respect to the statutory prohibition's regulatory extensions formerly found at 43 CFR 20.735–23, and is reinstituting those regulatory extensions, in modified form to conform with the requirements of 5 CFR part 2635, in § 3501.103(b).

In addition to all MMS employees, § 3501.103(b) describes the employees to whom the regulatory prohibition therein applies as those in "positions classified at GS–15 and above" in "the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer," instead of in "pay grades equivalent to GS–16 and above" or in "merit pay positions" in those offices, as the superseded provision had done. Grades 16 and above of the General Schedule (GS) no longer exist, having been abolished by the Federal Employees Pay Comparability Act of 1990, Pub. L. 101–509. Likewise, the statutory basis for merit pay positions has expired. Although the coverage of the former provision reached some employees in merit pay positions at GS–13 and GS–14, the Department has determined that it is not necessary for the prohibition to reach employees at those grade levels in order to avoid the appearance of misuse of position or loss of impartiality and objectivity with which Department programs and administered.

As defined in former § 20.735–20(c) of 43 CFR, "the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer" included the Immediate Office of the Secretary (except for the Office of Historically Black College and University Programs and Job Corps); Office of the Solicitor; Office of the Inspector General; Office of Hearings and Appeals; Office of Congressional and Legislative Affairs; Office of Public Affairs; all Assistant Secretaries, their immediate Office staff and heads of bureaus which are subordinate to an Assistant Secretary, including the following offices under the Office of the Assistant Secretary—Policy, Management and Budget: Office of Acquisition & Property Management, Office of Budget, Office of Environmental Affairs, and Office of Program Analysis. This list, modified to reflect reorganizations and restructuring at the Department, has been carried forward as the definition of "Office of the Secretary and other Departmental offices reporting directly to a Secretary officer" in this section.

Paragraph (b)(2) of § 3501.103 contains exceptions to the regulatory restriction in § 3501.103(b)(1). These exceptions are being carried forward from the former regulatory restriction in 43 CFR part 20, and provide that the restriction does not apply to an individual employed on an intermittent or seasonal basis for a period not exceeding 180 working days in each calendar year, or a special Government employee engaged in field work relating to land, range, forest, and mineral conservation and management activities.

Section 3501.103(c)91) provides for an additional restriction on employees' interests in Federal lands. Because the Department has authority to grant claims, permits, leases, small tract entries, and other rights in most of the country's nationally owned public lands and natural resources, the Department's employee responsibilities and conduct regulations long included a provision at 43 CFR 20.735–23(b)(3), generally restricting all employees of the Department from acquiring or retaining such rights for commercial or

investment purposes. This prohibition has been reinstituted, in modified form to conform with the requirements of 5 CFR part 2635, as § 3501.103(b)(1). The Department has determined under 5 CFR 2635.403(a) that it is necessary to continue to restrict all employees from acquiring or retaining, for commercial or investment purposes, any claim, permit, lease, small tract entry, or other right in lands or resources administered or controlled by the Department, in order to maintain public confidence in the impartiality or objectivity with which the Department's programs are administered. The Department has made the additional determination under 5 CFR 2635.403(a) with respect to this prohibition that it is necessary for the efficiency of the service to extend the prohibition to employees' spouses and minor children.

Paragraph (c)(2) of § 3501.103 contains two exceptions to the regulatory restriction in § 3501.103(c)(1). Both exceptions had applied to the former restriction in 43 CFR part 20. The first exception is intended to make it clear that the prohibition does not apply to acquiring or holding a right in Federal lands, administered or controlled by the Department, for recreational purposes. The second exception allows employees working in the Office of the Assistant Secretary—Indian Affairs or in the Bureau of Indian Affairs to acquire or retain interests in Federal lands controlled by the Department for the benefit of Indians or Alaska Natives. Many of those employees are Native Americans or Alaska Natives who may have an involuntary interest in tribal lands simply because of their innate membership in their home tribes. Generally, under the exception at 18 U.S.C. 208(b)(4) to the prohibitions contained in 18 U.S.C. 208(a), such an interest would not bar an employee's participation in a particular matter affecting the interest.

Under § 3501.103(d), the DAEO may require divestiture of an interest in Federal lands that would otherwise be allowed to be retained under the exceptions listed in § 3501.103(b)(2), using the standard of "substantial conflict" set forth in 5 CFR 2635.403(b). Under § 3501.103(e), the DAEO may grant a waiver from the regulatory restrictions in paragraphs (b) and (c) of this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the restriction is not necessary to avoid the appearance of misuse of position or loss or impartiality and objectivity with which Department programs are administered. An employee may be required under the waiver to disqualify himself from a particular matter or take other appropriate action. Section 3501.103(f) provides that existing waivers, issued under the Department's regulations for employees to whom the regulatory prohibitions in paragraphs (b) and (c) of this section applied under the former provisions in 43 CFR part 20, remain in effect but may be withdrawn subject to the standard for waivers in paragraph (e).

Section 3501.104 Prohibited Interests in Mining

Section 3501.104(a) provides a cross-reference to the prohibition in the Surface Mining Control and Reclamation Act of 1977 (Surface Mining Act), at 30 U.S.C. 1211(f), on employees of the Office of Surface Mining Reclamation and Enforcement or any other employee who performs functions or duties under the Surface Mining Act having any financial interest in underground or surface coal mining operations, and the Department's regulation at 30 CFR part 706 which implement the prohibition. The Department has included this cross-reference in the supplemental regulation at the request of OGE, because some of the interests prohibited by the Surface Mining Act are financial interest within the meaning of 5 CFR 2635.403(c).

Section 3501.104(b)(1) prohibits employees of the U.S. Geological Survey and their spouses and minor children from having a direct or indirect financial interest in mining activities conducted on privately-owned lands within the United States. This provision is being issued under the authority of 5 CFR 2635.403(a), based on the Department's determinations that the acquisition or retention of such interests would cause a reasonable person to question the impartiality and objectivity with which USGS programs are administered, and that there is a direct and appropriate nexus between the prohibition as applied to employees' spouses and minor children and the ability of USGS to carry out efficiently its mission related to the mineral resources of the national domain. This provision is based upon the former provision at 43 CFR 20.735–25(b)(2) (now superseded), under which neither the Director nor any member of the USGS was allowed to hold "substantial" personal or private interests, direct or indirect, in any private mining activities in the United States. The Department found this provision useful in avoiding conflicts of interest for USGS employees.

As defined in paragraph (b)(2)(i) of § 3501.104, "financial interest" has the meaning given in the executive branch-wide Standards at 5 CFR 2635.403(c). Also, as defined in paragraph (b)(2)(ii) of § 3501.104, "private mining activities" include exploration, development and production of oil, gas and other minerals on privately-owned lands in the United States. Lands owned by the Federal government or by a State or local government are not privately-owned.

Paragraph (b)(3) of § 3501.104 contains exceptions to the regulatory restriction in § 3501.104(b)(1). These exceptions are intended to permit the acquisition or holding of financial interests that the Department has determined are unlikely to raise questions regarding the objective and impartial performance of USGS employees' official duties or the efficient accomplishment of the Department's mission. The exceptions permit interests of certain de minimis values. These threshold amounts vary for employees of different organizational elements of the USGS, depending on the extent of the elements' direct connection to private mining activities in the United States. There is also a de minimis amount set for mineral royalties and "overriding royalty interests" (ORRI), i.e., an exclusive payment that is generally given to a landowner by an oil exploration company in return for the right to explore and produce oil and/or gas from privately-owned lands. An ORRI is generally determined by the quantity of oil and/or gas produced at the surface of an active well and does not include production costs. The exceptions also permit interests in publicly traded or publicly available investment funds and qualified profit sharing, retirement, or similar plans, provided that, in the case of such a fund, its prospectus does not indicate the objective or practice of concentrating its investments in entities engaged in private mining activities in the United States, or, in the case of such a plan, the plan does not invest more than 25 percent of its funds in debt or equity instruments of entities engaged in private mining activities in the United States, and provided that the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund or plan. In addition, for the spouses and minor children of USGS employees, the exceptions permit the acquisition or retention of a financial interest in mining activities conducted on privately-owned lands within the United States when the interest was

obtained under certain circumstances unrelated to USGS employment.

Under § 3501.104(b)(4), the Director of the USGS may require divestiture of a financial interest that would otherwise be allowed to be retained under the exceptions listed in § 3501.104(b)(3), if he or she determines under 5 CFR 2635.403(b) that the financial interest will require the employee's disqualification to a debilitating extent or will adversely affect the efficient accomplishment of the Department's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest. Under § 3501.104(b)(5), the Director of the USGS may grant a waiver from the regulatory restrictions in paragraph (b)(1) of this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the restriction is not necessary to avoid the appearance of misuse of position or loss of impartiality and objectivity with which Department programs are administered. An employee may be required under the waiver to disqualify himself from a particular matter or take other appropriate action.

Section 3501.104(b)(6) provides that a spouse or minor child of an employee may retain a financial interest otherwise prohibited by paragraph (b)(1) of this section, if the interest was permitted under criteria and procedures in effect before November 2, 1996 (pursuant to provision at 43 CFR 20.735–25(b)(2) which expired at that time). The Director of the USGS may, however, review those retained financial interests for consistency with the standard for waivers in paragraph (b)(5) of this section, and may disallow an interest if he or she determines in writing that the waiver standard is not met.

Section 3501.105 Outside Employment and Activities

5 CFR 2635.802(a) provides that an employee shall not engage in outside employment or activities if the outside employment or activity is prohibited by, *inter alia*, an agency supplemental regulation. To much the same effect, 5 CFR 2635.403 permits an agency, by supplemental regulation, to prohibit compensated outside employment on the same basis that it may prohibit employees from holding other financial interests. The Department's employee responsibilities and conduct regulation at 43 CFR part 20 had included various prohibitions on the outside employment and activities of specific classes of Department employees.

To the extent that prohibitions on employees' outside employment and activities were issued by an agency under authority independent of 5 CFR part 2635, the prohibitions would not have to be included in the agency's supplemental regulation. Nevertheless, the Department is including in § 3501.105(a)(1) a cross-reference to the statutory prohibition at 43 U.S.C. 31(a), under which employees of the U.S. Geological Survey shall execute no surveys or examinations for private parties or corporations. The purpose of including this cross-reference in the supplemental regulation is to provide further notice to employees of the prohibition.

Also with respect to prohibited outside employment and activities, the Department is reinstituting in § 3501.105(a)(2) the longstanding prohibitions, which had been included in its former regulations at 43 CFR 20.735–22(c), against Bureau of Land Management employees working as real estate agents and realty specialists. The Department has determined this prohibition is necessary to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered, and to avoid any public perception that Department employees are using their official positions or Department connections to advance their outside real estate careers. In order to lessen the burden of this prohibition, such employees are not required to cancel a real estate license, but may maintain the license on an inactive basis as they were allowed to do under the former regulations.

Finally with respect to prohibited outside employment and activities, the Department is reinstituting in § 3501.105(a)(4) the longstanding prohibition which had been included in its former regulations, at 43 CFR 20.735–27(c)(1), against employees in the Office of the Assistant Secretary—Indian Affairs, and in the Bureau of Indian Affairs (BIA), holding a position on a tribal election board or on a tribal school board which oversees BIA schools. The Department has determined that this prohibition is needed to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered.

Under 5 CFR 2635.803, an agency that determines it is necessary or desirable for the purpose of administering its ethics program may, by supplemental regulation, require its employees to obtain written approval before engaging in outside employment. The Department's former regulation at 43 CFR 20.735–22 provided that each major program operating component of the Department and other Departmental offices could require their employees to obtain approval to engage in outside work by issuing supplementary requirements. The prior approval requirements that were instituted pursuant to that authority remained in effect through November 1, 1996, under the note following 5 CFR 2635.803, as extended, and appendix D to part 2635. Those requirements served the Department well in ensuring that its employees avoided violations of the standards of conduct and conflict of interest statutes. In accordance with 5 CFR 2635.803, the Department has determined that it is necessary to the administration of its ethics program to require prior approval for certain types of outside employment that pose a potential for employees to engage in conduct that might violate applicable laws and regulations.

Therefore, § 3501.105(b)(1)(i) requires an employee (other than a U.S. Geological Survey employee—who would be subject to a broader provision—or a special Government employee) who wishes to engage in outside employment with a prohibited source to obtain prior written approval from his servicing ethics counselor before engaging in such outside employment. In identifying a "prohibited source" for purposes of this prior approval requirement, the Department will apply the definition of that term in the Standards at 5 CFR 2635.203(d), a supplemented by the separate agency component designations in § 3501.102(a). Thus, an employee would have to obtain approval before engaging in outside employment with any person (including an organization more than half of whose members are persons) seeking official action by the Department, or, in the case of an employee in one of the separate agency components designated in § 3501.102(a), by that component; doing business or seeking to do business with the Department, or, in the case of an employee in one of the separate agency components designated in § 3501.102(a), with that component; conducting activities regulated by the Department, or, in the case of an employee in one of the separate agency components designated in § 3501.102(a), by that component; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Section 3501.105(b)(1) provides further that this

prior approval requirement applies without regard to whether the outside employment is to be undertaken for compensation.

In view of the organic restrictions on outside activities that apply to U.S. Geological Survey (USGS) employees, and USGS's success in avoiding violations of those restrictions by having had a broad prior approval requirement for its employees, § 3501.105(b)(1)(ii)(A) provides that notwithstanding the requirement for prior approval of outside employment with a prohibited source in § 3501.105(b)(1)(i), USGS employees must obtain prior written approval for any outside employment. Under § 3501.105(b)(1)(ii)(B), however, categories of outside employment could be exempted by USGS from the prior written approval requirement, provided the employment exempted is not prohibited by law, the Standards, or these supplemental regulations, and would normally be approved if subject to the case-by-case requirement for prior approval.

Section 3501.105(b)(2) lists the basic items that an employee must include in an approval request. Section 3501.105(b)(3) sets forth the standard to be used in evaluating approval requests. Section 3501.105(b)(4) provides definitions of terms used in this section. Under § 3501.105(b)(4)(i), "employment" is broadly defined to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal and similar organizations, unless such activities involve the provision of professional services or advice and are for compensation other than reimbursement of expenses. Paragraph (b)(4)(ii) of § 3501.105 sets forth for ease of reference the definition of "prohibited source" at 5 CFR 2635.203(d), as supplemented by the designation of separate agency components at § 3501.102.

III. Repeal of Portions of the Department's Employee Responsibilities and Conduct Regulations and Related Modifications

The interim rule removes those provisions in the regulations at 43 CFR part 20 governing Department employees' responsibilities and conduct that had remained in effect through November 1, 1996, pursuant to the notes following 5 CFR 2635.403(a) and 2635.803, as extended, and the appendixes to part 2635. In addition, the interim rule removes a provision dealing with use of official title, which was superseded when the executive branch-wide Standards went into effect on February 3, 1993, but which inadvertently was not removed from 43 CFR part 20 when the Department first amended that regulation in response to the issuance of the Standards.

The interim rule also removes provisions in 43 CFR part 20 which, based on the United States Bureau of Mines' organic legislation at 30 U.S.C. 6, prohibited certain interests in mining activities for certain Department employees. Pub. L. 104–134, the Omnibus Consolidated Rescissions and Appropriations Act of 1996, closed the United States Bureau of Mines on April 26, 1996. Likewise, the interim rule removes provisions in 43 CFR part 20 that were based on prohibitions in the Trading with Indians Act, at 18 U.S.C. 437. Pub. L. 104–178 repealed 18 U.S.C. 437 on August 6, 1996.

Additionally, the Department is removing from 43 CFR part 20 various sections that are redundant, in light of other regulations. Those sections, and the regulations which the Department has determined make them unnecessary for inclusion in 43 CFR part 20, are § 20.735–2(c) regarding equal employment opportunity policy, and § 20.735–10(a) regarding sexual harassment, both unnecessary in light of regulations at 29 CFR part 1614; § 20.735–6 regarding gifts and decoration from foreign governments, unnecessary in light of regulations at 41 CFR part 101–49; § 20.735–8 regarding nepotism, unnecessary in light of regulations at 5 CFR part 310; § 20.735–9 regarding political activity, unnecessary in light of regulations at 5 CFR part 734; and § 20.735–10(h) regarding patents, unnecessary in light of regulations at 43 CFR part 6.

These removals leave in 43 CFR part 20 only provisions which the Department has authority to issue independent of 5 CFR part 2635 or which for other reasons set forth in 5 CFR 2635.105 do not have to be included in an agency's supplemental standards of ethical conduct regulation. Among these provisions are rules regarding acceptance and payment of travel and related expenses. Revisions to those provisions are being made to inform employees of the Department's authority under 31 U.S.C. 1353 to accept payment from non-Federal sources for employees who are on official travel to a meeting or similar function. Non-substantive changes have been made to this and other preserved provisions, to reflect changes in related authorities or for greater clarity.

The provisions remaining in 43 CFR part 20 are being redesignated, and are having added to them a cross-reference to the executive branch-wide Standards at 5 CFR part 2635, the Department's supplemental standards of ethical conduct being codified at 5 CFR part 3501, the executive branch financial disclosure regulations at 5 CFR part 2634, and the employee responsibilities and conduct regulations at 5 CFR part 735.

IV. Matters of Regulatory Procedure

Executive Order 12866

In promulgating this interim rule, the Department has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive Order as it deals with agency organization, management, and personnel matters and is not, in any event, deemed "significant" thereunder.

Administrative Procedure Act

The Department has found good cause, pursuant to 5 U.S.C. 553(a)(2), (b), and (d)(3), for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules and repeals. The reason for this determination is that it is important to a smooth transition from the Department's prior ethics rules to the new executive branch-wide Standards that these rulemaking actions become effective as soon as possible. Furthermore, this rulemaking is related to the Department's organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 60-day public comment period. The Department will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence and co-signature of the Office of Government Ethics.

Regulatory Flexibility Act

The Department has determined that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605).

Paperwork Reduction Act

The Department has determined that these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 5 CFR Part 3501 and 43 CFR Part 20

Conflict of interests, Government employees.

Dated: September 30, 1997.

John R. Garamendi,

Deputy Secretary, Department of the Interior.

Approved: October 7, 1997.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Department of the Interior is amending title 5 of the Code of Federal Regulations with the concurrence of the Office of Government Ethics, and is also amending title 43 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter XXV, consisting of part 3501, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER XXV—DEPARTMENT OF THE INTERIOR

PART 3501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE INTERIOR

Sec.

3501.101 General.
3501.102 Designation of separate agency components.
3501.103 Prohibited interests in Federal lands.
3501.104 Prohibited interests in mining.
3501.105 Outside employment and activities.

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 30 U.S.C. 1211; 43 U.S.C. 11, 31(a); E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803.

§ 3501.101 General.

(a) In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Interior and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, employees of the Department are subject to the employee responsibilities and conduct regulations at 5 CFR part 735; the executive branch financial disclosure regulations at 5 CFR part 2634; and the Department's employee responsibilities and conduct regulations at 43 CFR part 20.

(b) *Definitions.* As used in this part:

(1) *Department* means the U.S. Department of the Interior and any of its components.

(2) *Bureau* means each major program operating component of the Department, the Office of the Secretary, the Office of the Solicitor, and the Office of the Inspector General.

(3) *Designated Agency Ethics Official* means the Assistant Secretary—Policy, Management and Budget.

(4) *Ethics Counselor* means the head of each bureau, except that the Deputy Assistant Secretary for Policy is the Ethics Counselor for employees within the Office of the Secretary.

(5) *Deputy Ethics Counselor* means the bureau personnel officer or other qualified headquarters employee who has been delegated responsibility for the operational duties of the Ethics Counselor for the bureau.

(c) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official, each Ethics Counselor is authorized, consistent with 5 CFR 2635.105(c), to issue explanatory guidance and establish procedures necessary to implement this part and part 2635 of this title for his or her bureau.

§ 3501.102 Designation of separate agency components.

(a) Each of the following ten components of the Department is designated as an agency separate from each of the other nine listed components and, for employees of that component, as an agency distinct from the remainder of the Department, for purposes of the regulations in subpart B of 5 CFR 2635 governing gifts from outside sources, 5 CFR 2635.807 governing teaching, speaking and writing, and § 3501.105 requiring prior approval of outside employment. However, the following ten components are not deemed to be separate agencies for purposes of applying any provision of 5 CFR part 2635 or this part to employees of the remainder of the Department:

(1) Bureau of Indian Affairs, including the Office of Indian Education Programs;

(2) Bureau of Land Management;

(3) Bureau of Reclamation;

(4) Minerals Management Service;

(5) National Indian Gaming Commission;

(6) National Park Service;

(7) Office of Surface Mining Reclamation and Enforcement;

(8) Office of the Special Trustee for American Indians;

(9) U.S. Fish and Wildlife Service; and

(10) U.S. Geological Survey.

(b) Employees in components not listed in paragraph (a) of this section (including employees within the immediate office of each Assistant Secretary) are employees of the remainder of the Department, which for those employees shall include the components designated in this section as well as those parts of the Department not designated in this section.

Example 1: A company that conducts activities regulated by the Bureau of Land Management would not be a prohibited source of gifts for an employee of the National Park Service (NPS), unless that company seeks official action by the NPS; does business or seeks to do business with the NPS; conducts activities that are regulated by the NPS; or has interests that may be substantially affected by the performance or nonperformance of that employee's official duties.

Example 2: A paralegal who works part-time in the Office of the Solicitor wants to take an additional part-time job with a private company that does business with the U.S. Geological Survey. The company is a prohibited source for the paralegal, since the company does business with a component of the Department from which his component has not been listed as separate in § 3501.102(a). The paralegal must obtain prior approval for the outside employment, because § 3501.105 requires employees to obtain such approval before engaging in outside employment with a prohibited source.

§ 3501.103 Prohibited interests in Federal lands.

(a) *Cross-references to statutory prohibitions*—(1) *Prohibited purchases of public land by Bureau of Land Management employees.* As set forth in 43 CFR 20.401, the officers, clerks, and employees in the Bureau of Land Management are prohibited by 43 U.S.C. 11 from directly or indirectly purchasing or becoming interested in the purchase of any of the public lands.

(2) *Prohibited interests in the lands or mineral wealth of the region under survey for U.S. Geological Survey employees.* As set forth in 43 CFR 20.401, the Director and members of the U.S. Geological Survey are prohibited by 43 U.S.C. 31(a) from having any personal or private interests in the lands or mineral wealth of the region under survey.

(b) *Prohibited financial interests in Federal lands for Minerals Management Service employees and for the Secretary and employees of the Office of the*

Secretary and other Departmental offices reporting directly to a Secretarial officer who are in positions classified at GS–15 and above. (1) Except as provided in paragraph (b)(2) of this section, the following employees may not acquire or hold any direct or indirect financial interest in Federal lands or resources administered or controlled by the Department:

(i) All employees of the Minerals Management Service; and

(ii) The Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer who are in positions classified at GS–15 and above. As used in this section, "Office of the Secretary and other Departmental Offices reporting directly to a Secretarial officer" means the Immediate Office of the Secretary; Office of the Solicitor; Office of the Inspector General; Office of Communications; Office of Congressional and Legislative Affairs; all Assistant Secretaries, their immediate Office staff and heads of bureaus which are subordinate to an Assistant Secretary. This includes the following offices under the Office of the Assistant Secretary—Policy, Management and Budget: Office of Budget, Office of Hearings and Appeals, Office of Acquisition & Property Management, Office of Environmental Policy and Compliance, Office of Policy Analysis, Office of Financial Management, and Office of Information Resources Management.

(2) *Exceptions.* The prohibition in paragraph (b)(1) of this section does not apply to:

(i) An individual employed on an intermittent or seasonal basis for a period not exceeding 180 working days in each calendar year; or

(ii) A special Government employee engaged in field work relating to land, range, forest, and mineral conservation and management activities.

(c) *Prohibition as to Department-granted rights in Federal lands.* (1) Except as provided in paragraph (c)(2) of this section, employees and their spouses and their minor children are prohibited from acquiring or retaining any claim, permit, lease, small tract entries, or other rights that are granted by the Department in Federal lands.

(2) *Exceptions.* (i) Nothing in paragraph (c)(1) of this section prohibits the recreational or other personal and noncommercial use of Federal lands by an employee, or the employee's spouse or minor child, on the same terms as use of Federal lands is available to the general public.

(ii) Unless otherwise prohibited by law, employees in the Office of the Assistant Secretary—Indian Affairs, or in the Bureau of Indian Affairs, and the spouses and minor children of such employees, are not prohibited by paragraph (c)(1) of this section from acquiring or retaining rights in Federal lands controlled by the Department for the benefit of Indians or Alaska Natives.

(d) *Divestiture.* The Designated Agency Ethics Official may require an employee to divest an interest the employee is otherwise authorized to retain under an exception listed in this section, based on a determination of substantial conflict under § 2635.403(b) of this title.

(e) *Waivers.* The Designated Agency Ethics Official may grant a written waiver from the prohibitions contained in paragraphs (b) and (c) of this section, based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartially, or otherwise to ensure confidence in the impartiality and objectivity with which Department programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as acquiring execution of a written statement of disqualification. Notwithstanding the grant of any waiver, an employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(f) *Pre-existing interests.* An employee may retain a financial interest otherwise prohibited by paragraph (b) or (c) of this section which was approved in writing under criteria and procedures in effect before November 2, 1996, unless the approval is withdrawn by the Designated Agency Ethics Official, subject to the standards for waivers in paragraph (e) of this section.

§ 3502.104 Prohibited interests in mining.

(a) *Cross-referenced to statutory prohibition.* As set forth in 30 CFR part 706 and 43 CFR 20.402, employees of the Office of Surface Mining Reclamation and Enforcement and other employees who perform functions or duties under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., are prohibited by 30 U.S.C. 1211(f) from having a direct or indirect financial interest in underground or surface coal mining operations.

(b) *Prohibited interests in private mining activities in the United States for U.S. Geological Survey employees, their spouses, and minor children.* (1) Except as provided in this section, no employee of the U.S. Geological Survey (USGS), or spouse or minor child of a USGS employee, shall have a direct or indirect financial interest in private mining activities in the United States.

(2) *Definitions.* For purposes of applying the prohibition in paragraph (b)(1) of this section:

(i) *Financial interest* has the meaning set forth in 5 CFR 2635.403(c), and includes an employee's legal or beneficial interest in a trust.

(ii) *Private mining activities* means exploration, development, and production of oil, gas, and other minerals on land in the United States that is not owned by the Federal government or by a State or local government.

(3) *Exceptions.* The prohibition set forth in paragraph (b)(1) of this section does not apply to:

(i)(A) Financial interests worth $5000 or less, for employees (or their spouses and minor children) of the Office of the Director and the Geologic Division, or

(B) A single financial interest worth $5000 or less or an aggregate of financial interests worth $15,000 or less, for employees (or their spouses and minor children) of all other USGS organizational elements;

(ii) Mineral royalties and overriding royalty interests of $600 per year or less;

(iii) A publicly traded or publicly available investment fund (e.g., a mutual fund) which, in its prospectus, does not indicate the objective or practice of concentrating its investments in entities engaged in private mining activities in the United States, if the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund;

(iv) A legal or beneficial interest in a qualified profit sharing, retirement, or similar plan, provided that the plan does not invest more than 25 percent of its funds in debt or equity instruments of entities engaged in private mining activities in the United States, and the employee neither exercise control nor has the ability to exercise control over the financial interests held in the plan; or

(v) The ownership of a financial interest by an employee's spouse or minor child where the spouse or minor child obtained the interest through:

(A) A gift from someone other than the employee or a member of the employee's household;

(B) Inheritance;

(C) Acquisition prior to the employee's becoming a USGS employee;

(D) Acquisition prior to marriage to a USGS employee; or

(E) A compensation package in connection with the employment of the spouse or minor child.

(4) *Divestiture.* The Director of the U.S. Geological Survey may require an employee to divest an interest the employee is otherwise authorized to retain under an exception listed in paragraph (b)(3) of this section, based on a determination of substantial conflict under § 2635.403(b) of this title.

(5) *Waivers.* The Director of the U.S. Geological Survey may grant a written waiver from the prohibition contained in paragraph (b)(1) of this section, based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Department programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. Notwithstanding the granting of any waiver, an employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(6) *Pre-existing interests.* A spouse or minor child of an employee may retain a financial interest otherwise prohibited by paragraph (b)(1) of this section which was permitted under criteria and procedures in effect before November 2, 1996, unless the Director of the U.S. Geological Survey determines in writing that such retention is inconsistent with the standards for waivers in paragraph (b)(5) of this section.

§ 3501.105 Outside employment and activities.

(a) *Prohibited outside employment and activities.* (1) Under 43 U.S.C. 31(a), employees of the U.S. Geological Survey shall execute no surveys or examinations for private parties or corporations.

(2) Employees in the Bureau of Land Management may not engage in outside employment as real estate agents and realty specialists. Such employees are not required to cancel a real estate license, but may maintain the license on an inactive basis.

(3) Employees in the Office of the Assistant Secretary—Indian Affairs, or in the Bureau of Indian Affairs (BIA), may not hold a position on a tribal election board or on a tribal school board which oversees BIA schools.

Note to paragraph (a)(3): Except for membership on a tribal election board and a tribal school board which oversees BIA schools, an eligible person employed in the Office of the Assistant Secretary—Indian Affairs or in the BIA may become a candidate for office in his local tribe or may be appointed as a representative of his local tribe if prior approval is obtained from the Deputy Assistant Secretary—Indian Affairs pursuant to paragraph (b) of this section.

(b) *Prior approval of outside employment*—(1) *Prior approval requirement.* (i) An employee of the Department, other than an employee of the U.S. Geological Survey or a special Government employee, shall obtain written approval from his ethics counselor or other agency designee before engaging in outside employment with a prohibited source.

(ii)(A) An employee of the U.S. Geological Survey (USGS), other than a special Government employee, shall obtain written approval from the USGS deputy ethics counselor before engaging in any outside employment.

(B) The USGS may issue instructions exempting categories of employment from the prior approval requirement in paragraph (b)(1)(ii)(A) of this section, based on a determination that the employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(2) *Form of request for approval.* (i) A request for prior approval of outside employment shall include, at a minimum, the following:

(A) The employee's name, occupational title, office address, and office telephone number;

(B) A brief description of the employee's official duties;

(C) The nature of the outside employment, including a full description of the specific duties or services to be performed;

(D) The name and address of the prospective outside employer; and

(E) A statement that the employee currently has no official duties involving a matter that affects the outside employer and will disqualify himself from future participation in matters that could directly affect the outside employer.

(ii) Upon a significant change in the nature of the outside employment or in the employee's official position, the employee shall submit a revised request for approval.

(3) *Standard for approval.* Approval shall be granted unless a determination is made that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(4) *Definitions.* As used in this section:

(i) *Employment* means any form of non-Federal business relationship involving the provision of personal services by the employee, with or without compensation. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses.

(ii) *Prohibited source* has the meaning in 5 CFR 2635.203(d), as supplemented by § 3501.102, and includes any person who:

(A) Is seeking official action by the Department or, in the case of an employee of one of the separate agency components designated in § 3501.102(a), by that component;

(B) Does business or seeks to do business with the Department, or in the case of an employee of one of the separate agency components designated in § 3501.102(a), with that component;

(C) Conducts activities regulated by the Department or, in the case of an employee of one of the separate agency components designated in § 3501.102(a), by that component;

(D) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(E) Is an organization a majority of whose members are described in paragraphs (c)(4)(ii) (A) through (D) of this section.

TITLE 43—[AMENDED]

SUBTITLE A—[AMENDED]

2. Part 20 of 43 CFR is revised to read as follows:

PART 20—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.
20.101 Cross-references to ethical conduct, financial disclosure and other applicable regulations.
20.102 Definitions.
20.103 Employee responsibilities.

Subpart B—Department Ethics Program

20.201 Ethics officials.
20.202 Ethics program responsibilities.
20.203 Exclusion from confidential financial disclosure requirement for certain special Government employees.

Subpart C—Acceptance and Payment of Travel and Related Expenses

20.301 General policy.
20.302 Exclusions.

Subpart D—Special Provisions Governing Financial and Other Outside Interests of Certain Employees of the Department

20.401 Interests in Federal lands.
20.402 Interests in underground or surface coal mining operations.
20.403 Certificates of disclaimer.

Subpart E—Other Employee Conduct Provisions

20.501 General policy.
20.502 Conformance with policy and subordination to authority.
20.503 Scope of authority.
20.504 Selling or soliciting.
20.505 Habitual use of intoxicants.
20.506 Appropriations, legislation and lobbying.
20.507 Unlawful organizations.
20.508 Notary.
20.509 Penalty mail and official stationery.
20.510 Fraud or false statements in a Government matter.
20.511 Carrying of firearms.
20.512 Labor practices.

Subpart F—Disciplinary and Remedial Actions

20.601 General.
20.602 Remedial action.
20.603 Appealing an order for remedial action.

Authority: 5 U.S.C. 301; 5 U.S.C. App. (Reorganization Plan No. 3 of 1950); 30 U.S.C. 1211; 43 U.S.C. 11, 31; 5 CFR 2634.903, 2634.905.

Subpart A—General Provisions

§ 20.101 Cross-references to ethical conduct, financial disclosure and other applicable regulations.

In addition to the rules in this part, employees of the Department of the Interior also should refer to the Standards of Ethical Conduct for Employees of the Executive Branch, at 5 CFR part 2635; the Department's regulations that supplement those executive branch-wide standards at 5 CFR part 3501; the employee responsibilities and conduct regulations at 5 CFR part 735; and the executive branch financial disclosure regulations at 5 CFR part 2634.

§ 20.102 Definitions.

(a) The following terms are used throughout this part and have the following meanings:

(1) *Department* means the U.S. Department of the Interior and any of its components.

(2) *Secretary* means the Secretary of the Interior.

(3) *Bureau* means each major program operating component of the Department, the Office of the Secretary, the Office of the Solicitor, and the Office of the Inspector General.

(4) *Employee* means a regular employee, a special Government employee, and a contract education employee in the Office of the Assistant Secretary—Indian Affairs or the Bureau of Indian Affairs, unless the text of a particular subpart, section, or paragraph indicates that either regular employees or special Government employees are not intended to be covered by that subpart, section or paragraph. Volunteers in National Parks whose services are accepted pursuant to 16 U.S.C. 18g are not employees.

(b) *Specific definitions.* Additional definitions of terms specifically associated with a particular subpart, section, or paragraph are found in that subpart, section, or paragraph.

§ 20.103 Employee responsibilities.

It is the responsibility of each employee:

(a) To be familiar with and to comply with all Federal statues, Executive Orders, and regulations that govern his or her conduct. Employees are expected to consult with their supervisors and servicing ethics counselors on questions they may have regarding the applicability of any ethics or other conduct provision. Ethics advice may also be obtained from the Solicitor's Office and the Department Ethics Office.

(b) To report directly or through appropriate channels to the Office of Inspector General or other appropriate authority matters coming to their attention which do or may involve violations of law or regulation by employees, contractors, sub-contractors, grantees, subgrantees, lessees, licensees or other persons having official business with the Department.

Subpart B—Department Ethics Program

§ 20.201 Ethics officials.

(a) The Designated Agency Ethics Official is the Assistant Secretary—Policy, Management and Budget. In accordance with 5 CFR 2638.203, the Designated Agency Ethics Official is responsible for the coordination and management of the Department's ethics program.

(b) The head of each bureau is the "Ethics Counselor" for that bureau, except that the Deputy Assistant Secretary for Policy is the Ethics Counselor for employees in the Office of the Secretary and related offices. The Solicitor is the Ethics Counselor for the Office of the Solicitor and the Inspector General is the Ethics Counselor for the Office of Inspector General.

(c) The personnel officer for each bureau or other qualified employee who has been delegated responsibility for the operational duties of the Ethics Counselor for the bureau, it the "Deputy Ethics Counselor" for that bureau.

(d) A bureau, regional, or area personnel officer or other qualified employee may be assigned to serve as an "Associate Ethics Counselor" or "Assistant Ethics Counselor," with delegated responsibility to perform the operational duties of the Ethics Counselor at the field level. Associate Ethics Counselors or Assistant Ethics Counselors may also be designated within the bureau headquarters.

§ 20.202 Ethics program responsibilities.

(a) The Designated Agency Ethics Official (or the alternate agency ethics official in his or her absence) shall coordinate and manage the department's ethics program in accordance with 5 CFR 2638.203.

(b) Each Ethics Counselor shall, for his or her bureau:

(1) Order disciplinary or remedial action in accordance with the provisions of subpart F of this part. This authority may not be redelegated.

(2) Designate: (i) The Bureau Personnel Officer (or other qualified headquarters employee) as Deputy Ethics Counselor to carry out operational duties of the Ethics Counselor within their bureaus under the general direction of the Ethics Counselor; and

(ii) Headquarters bureau, regional, or area personnel officers (or other qualified employees) as Associate Ethics Counselors or Assistant Ethics Counselors to perform ethics counseling and the collection and review of financial disclosure reports.

(3) Ensure that vacancy announcements for positions which require a public or confidential financial disclosure report alert applicants to the filing requirement.

(4) Establish and maintain internal procedures and guidelines to adequately and systematically inform employees of the content, meaning, and importance of ethical conduct and other conduct regulations.

(c) All supervisors may make decisions as to whether conduct by employees under their supervision would result in the appearance that the employee would violate or is violating the ethical standards set forth in 5 CFR 2635; all supervisors are expected, therefore, to be familiar with those standards. In addition, any supervisor who grants prior approval of an employee's outside employment under 5 CFR 3501.105(b) is expected, at a

minimum, to provide information to the employee about the prohibitions in 18 U.S.C. 203, 205 and 208 at the time such approval is granted.

§ 20.203 Exclusion from confidential financial disclosure requirement for certain special Government employees.

In an instance involving the proposed employment of a special Government employee for highly specialized and limited duties, the head of the bureau or office may propose to the Designated Agency Ethics Official (DAEO) a reporting of financial interests restricted to such interests as may be determined to be relevant to the duties the special Government employee is to perform. The DAEO may, under the provisions of 5 CFR 2634.905, exclude the special Government employee from all or a portion of the confidential reporting requirements of the OGE Form 450. Any confidential financial disclosure requirement must be satisfied by the special Government employee before he begins his employment.

Subpart C—Acceptance and Payment of Travel and Related Expenses

§ 20.301 General policy.

(a) Except as specifically authorized by law, when an employee is on official duty (no leave status), all travel and accommodations shall be at Government expense and his or her acceptance of outside reimbursement for travel expenses or services in kind from private sources, either in his or her behalf or in behalf of the Government, is not allowed.

(b) Under certain circumstances, the Department may charge a fee or accept reimbursement for providing a service or thing of value to a private source when the service or thing of value provided benefits to both the Government and the particular private source (31 U.S.C. 9701). In such instances only a portion of the costs can be accepted from the private source. The Department must pay expenses associated with its usual official business and for the benefits it receives from participating in the event. The private source can be charged or may reimburse the Department for that portion of the service provided that exceeds the Department's usual expenses and the benefits to the Government. Under this provision, payments from private sources must be deposited in the U.S. Treasury unless the bureau receiving the payment is authorized by statute to accept such payments.

(c) When a bureau is authorized by statute other than 31 U.S.C. 1353 to accept gifts, and 31 U.S.C. 1353 does not apply, the travel expenses incurred by an employee directed to participate in a convention, seminar, or similar meeting sponsored by a private source for the mutual interest of the Government and the private source may be reimbursed to the bureau and credited to its appropriation. The employee shall be paid by the bureau in accordance with the law relating to reimbursement for official travel and any accommodations and goods or services in kind furnished an employee shall be treated as a donation to the bureau and an appropriate reduction shall be made to the employee's reimbursement (46 CG 689 (1967)).

(d) When participation at a function is not in an official capacity, an employee may accept reimbursement of travel and accommodation expenses from a private source, provided that such acceptance is permitted by law and Federal regulations. Participation as a private citizen must occur on one's own time, such as while on leave. If participation should occur during the course of official travel (i.e., evening or weekend hours during official travel status), the travel voucher submitted for Government reimbursement of official duty expenses must be adjusted to claim only that per diem and travel attributable to official duty. Employees who are in positions for which the rate of pay is specified in 5 U.S.C. 5311–5318 (the Executive Schedule) are on 24-hour duty, and determinations of what constitutes official duty and what is private participation should be carefully made.

§ 20.302 Exclusions.

(a) Where employee travel is for attendance at a meeting or similar function (31 U.S.C. 1353(a)), the Department may accept payment for the employee and/or the employee's spouse's travel from a non-Federal source when proper consideration is given to the conditions in paragraph (a)(1) of this section and a written authorization to accept payment is issued in advance of the travel.

(1) *Conditions.* Such travel expenses paid for by a non-Federal source may be accepted by the Department only if all of the following conditions are met:

(i) The travel relates to the employee's official duties;

(ii) The travel, subsistence and related expenses are with respect to the attendance of an employee (and/or the accompanying spouse of such employee when applicable) at a meeting or similar function. This includes a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station, and is sponsored or cosponsored by a non-Federal source;

(iii) The non-Federal source is not disqualified because of a real or apparent conflict of interest as determined under paragraph (a)(2) of this section; and

(iv) The travel event is not required to carry out the Department's statutory or regulatory functions. Examples of statutory or regulatory functions that are essential to the Department's mission include investigations, inspections, audits, site visits, compliance reviews or program evaluations.

(2) *Conflict of interest analysis.* (i) The Department's acceptance of any payment from a non-Federal source under the authority of 31 U.S.C. 1353 shall not be approved when an Authorized Approving Official, identified in paragraph (a)(2)(iii) of this section, determines that under the circumstances, acceptance of the travel expenses would cause a reasonable person with knowledge of all relevant facts to:

(A) Question the integrity of the work to be performed by the employee receiving the benefit; or

(B) Question the integrity of the Department's other program operations.

(ii) When making these determinations, an Authorized Approving Official shall be guided by all relevant considerations including, but not limited to:

(A) The identity of the non-Federal source and the source's relationship to the Department;

(B) The purpose of the meeting or similar function and its relationship to the Department's programs or operations;

(C) The identity of other expected participants and their relationship to the Department;

(D) The nature and sensitivity of any pending Department matter which, when decided, may affect the interests of the non-Federal source;

(E) The significance of the employee's role in any such pending matter;

(F) The monetary value and character of the travel benefits offered by the non-Federal source; and

(G) The potential reaction from Department customers, including the public, if the acceptance of travel expenses was made known to them.

(iii) An "Authorized Approving Official" means that Department official who has been delegated authority to approve the usual travel authorizations of the employee who will benefit from the non-Federal travel payment.

(iv) The procedures stated below must be satisfied before the employee (and/or the accompanying spouse) begin his or her travel:

(A) Each employee (and/or the accompanying spouse) must have an approved Travel Authorization (Form DI–1020). Section 10 ("Purpose and Remarks") of this Form must contain a statement that the authority to accept payment from a non-Federal source for the specified travel event is 31 U.S.C. 1353, and the travel situation complies with the conditions for acceptance under 41 CFR 304–1.4.

(B) The supplementary form entitled, "Report of Payments Accepted From Non-Federal Sources Under 31 U.S.C. 1353" (Form DI–2000) must also be completed and signed by the employee and the Authorized Approving Official. A copy of Form DI–1020 and Form DI–2000 must be filed with the employee's Deputy Ethics Counselor.

(C) Payment from a non-Federal source to cover the travel related expenses of an employee may be made in the form of a check or similar instrument made payable to the Department. Employees should not accept cash or negotiate checks or similar instruments payable to them. Any negotiable instruments received by an employee shall be transmitted immediately to the appropriate accounting office.

(b) When on official duty, contributions and awards incident to training in non-Government facilities, and payment of travel, subsistence, and other expenses incident to attendance at meetings may be accepted by an employee when the payment is made by a non-profit, tax exempt organization as described in 26 U.S.C. 501(c)(3) and when no real or apparent conflict of interest will result. Prior advice should be obtained from the employee's ethics counselor in this circumstance (5 U.S.C. 4111).

(c) Employees may accept reimbursement by the Department for travel and related expenses when on detail under the Intergovernmental Personnel Act, in accordance with 5 U.S.C. 3375.

(d) Should the Director of the United States Information Agency, with the approval of the employing agency, assign an employee to a foreign government, reimbursement for the employee's pay and allowances shall be made to the United States in an amount equal to the compensation, travel expenses, and allowances payable to such person during the period of such assignment, in accordance with 22 U.S.C. 1451.

(e) Should an employee be detailed by the Secretary to an international organization which requests services, the employee is deemed to be (for the purpose of preserving his or her allowances, privileges, rights, seniority, and other benefits) an employee of the Department and the employee is entitled to pay, allowances, and benefits from funds available to the Department. The international organization may reimburse the Department for all or part of the pay, travel expenses, and allowances payable during the detail; or, the detailed employee may be paid or reimbursed directly by the international organization for allowances or expenses incurred in the performance of duties required by the detail without regard to 18 U.S.C. 209 (5 U.S.C. 3343).

Subpart D—Special Provisions Governing Financial and Other Outside Interests of Certain Employees of the Department

§ 20.401 Interests in Federal lands.

(a) *Statutory prohibition applicable to employees of the Bureau of Land Management.* (1) In accordance with 43 U.S.C. 11, employees of the Bureau of Land Management are prohibited from voluntarily acquiring a direct or indirect interest in Federal lands.

(2) *Definitions.* For purposes of applying the prohibition in 43 U.S.C. 11:

(i) *Federal lands.* means public lands or resources or an interest in lands or resources administered or controlled by the Department, including, but not limited to, all submerged lands lying seaward outside of the area of "lands beneath navigable water" as defined in 43 U.S.C. 1301(a), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(ii) *Direct interest in Federal lands* means any employee ownership or part ownership in Federal lands or any participation in the earnings therefrom, or the right to occupy or use the property or to take any benefits there from, based upon a contract, grant, lease, permit, easement, rental agreement, or application. Direct interest in Federal lands also includes:

(A) Membership or outside employment in a business which has interests in Federal lands; and.

(B) Ownership of stock or other securities in corporations determined by the Department to have an interest in Federal lands directly or through a subsidiary.

(iii) *Indirect interest in Federal lands* means any ownership or part ownership of an interest in Federal lands by an employee in the name of another where the employee still reaps the benefits. Indirect interest in Federal lands also includes:

(A) Holdings in land, mineral rights, grazing rights or livestock which in any manner are connected with or involve the substantial use of the resources or facilities of the Federal lands; or

(B) Substantial holdings of a spouse or minor child.

(b) *Statutory prohibition applicable to employees of the U.S. Geological Survey.* (1) In accordance with 43 U.S.C. 31(a), the Director and members of the U.S. Geological Survey are prohibited from having any personal or private interests in the lands or mineral wealth of the region under survey.

(2) *Definitions.* For purposes of applying the prohibition in 43 U.S.C. 31(a):

(i) *Personal or private interest* means ownership of an interest in, or employment with a person or enterprise which leases or uses, Federal lands for commercial purposes.

(ii) *Region under survey* means Federal lands which are administered or controlled by the Department.

(c) *Exclusions.* (1)(i) Except for U.S. mineral surveyors, an individual employed on an intermittent or seasonal basis for a period not exceeding 180 working days in each calendar year, and a special Government employee (SGE) engaged in field work relating to land, range, forest, and mineral conservation and management activities, and the spouse of such an individual or SGE, shall not be precluded from retaining any interest, including renewal or continuation of existing rights, in Federal lands, provided that such individual or SGE or spouse shall not acquire any additional interest in Federal lands during employment.

(ii) A U.S. mineral surveyor is a person appointed under the authority of 30 U.S.C. 39, and as such is included within the term "officers, clerks, and employees" of the Bureau of Land Management as that term is used in 43 U.S.C. 11 and construed in *Waskey* v. *Hammer,* 223 U.S. 85 (1912). U.S. mineral surveyors are also considered to be special government employees.

(2) A Bureau of Land Management employee or any member of the employee's family may acquire wild free-roaming horses or burros from Federal lands for maintenance and protection through a cooperative agreement entered into in accordance with 43 CFR part 4700.

(3) A Bureau of Land Management employee may retain a direct or indirect interest in Federal lands when:

(i) There is little or no relationship between the employee's functions or duties and the particular interest in Federal lands, and

(ii) The employee, or the spouse or dependent child of the employee, acquired such an interest:

(A) By gift, devise, bequest, or court award or settlement, or

(B) Prior to the time the employee entered on duty in the Department.

(4) Pursuant to 43 U.S.C. 1621(d), 43 U.S.C. 11 does not apply to any land grants or other rights granted under 43 U.S.C. chapter 33.

(5) The recreational or other personal and noncommercial use of the Federal lands by an employee, the employee's spouse or dependent child, on the same terms as use of the Federal lands is available to the general public, is not prohibited.

(6) *Advisory councils.* Nothing in 43 U.S.C. 11 shall disqualify individuals appointed pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1739, as members of advisory boards or councils, from acquiring or retaining grazing licenses or permits issued pursuant to section 3 of the Taylor Grazing Act (43 U.S.C. 315b), or any other interest in land or resources administered by the Bureau of Land Management: Provided, that in no case shall the member of any such board or council participate in any advice or recommendation concerning such license or permit in which such member is directly or indirectly interested.

(d) *Request for advice.* When an employee is in doubt as to whether the acquisition or retention of any interest in lands or resources administered by the Department would violate the provisions of this section, a statement of the facts should be submitted promptly by the individual involved to his or her servicing ethics counselor for guidance.

§ 20.402 Interests in underground or surface coal mining operations.

(a) *Definitions.* As used in this section:

(1) *Direct financial interest in underground or surface coal mining operations* means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operation. Direct financial interests also include employment, pensions, creditor, real property and other financial relationships.

(2) *Indirect financial interest in underground or surface coal mining operations* means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests including interests held by his or her spouse, dependent child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, dependent child or other resident relative holds a financial interest.

(3) *Coal mining operation* means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur.

(4) *Performing any function or duty under the Surface Mining Control and Reclamation Act of 1977* means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

(b) *Prohibitions.* (1) Neither the Director nor any other employee of the Office of Surface Mining Reclamation and Enforcement or any other employee who performs functions or duties under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., shall have a direct or indirect financial interest in underground or surface coal mining operations.

(2) The Surface Mining Control and Reclamation Act of 1977, at 30 U.S.C. 1211(f), provides that anyone who knowingly violates the prohibitions in that Act shall, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment for not more than one year, or both.

(c) Employees are encouraged to review regulations contained in 30 CFR part 706 which pertain to the prohibitions restated in this section.

§ 20.403 Certificates of disclaimer.

(a) Each employee of the U.S. Geological Survey, Bureau of Land Management, Minerals Management Service, and Office of Surface Mining Reclamation and Enforcement shall sign a certificate of disclaimer upon entrance to or upon transfer to a position within any of these bureaus. The employee's signature will indicate that he or she:

(1) Is aware of the specific restrictions pertinent to his or her employment; and

(2) Is in compliance with such restrictions.

(b) If an employee is unable to sign the certificate, he or she must submit a statement of facts to the appropriate ethics counselor for review and appropriate action.

(c) Signed certificates of disclaimer shall be filed and maintained by the employee's deputy ethics counselor.

Subpart E—Other Employee Conduct Provisions

§ 20.501 General policy.

Employees of the Department are expected to maintain especially high standards of honesty, integrity, impartiality, and conduct to ensure the proper performance of Government business and the continual trust and confidence of citizens in their Government. Employees are expected to comply with all Federal statutes, Executive Orders, Office of Government Ethics and Office of Personnel Management regulations, and Departmental regulations. The conduct of employees should reflect the qualities of courtesy, consideration, loyalty to the United States, a deep sense of responsibility for the public trust, promptness in dealing with and serving the public, and a standard of personal behavior which will be a credit to the individual and the Department. These principles apply to official conduct and to private conduct which affects in any way the ability of the employee or the Department to effectively accomplish the work of the Department.

§ 20.502 Conformance with policy and subordination to authority.

Employees are required to carry out the announced policies and programs of the Department and to obey proper requests and directions or supervisors. While policies related to one's work are under consideration employees may, and are expected to, express their professional opinions and points of view. Once a decision has been rendered by those in authority, each employee is expected to comply with the decision and work to ensure the success of programs or issues affected by the decision. An employee is subject to appropriate disciplinary action, including removal, if he or she fails to:

(a) Comply with any lawful regulations, orders, or policies; or

(b) Obey the proper requests of supervisors having responsibility for his or her performance.

§ 20.503 Scope of authority.

Employes shall not engage in any conduct or activity which is in excess of his or her authority, or is otherwise contrary to any law or announced Departmental policy.

§ 20.504 Selling or soliciting.

Employees and other persons are prohibited from selling or soliciting for personal gain within any building or on

any lands occupied or used by the Department. Exception is granted for Department-authorized operations, including, but not limited to, the Interior Department Recreation Association, the Indian Arts and Crafts store, and for cafeteria, newsstand, snack bar and vending machine operations which are authorized by the Department of the benefit of employees or the public.

§ 20.505 Habitual use of intoxicants.

An employee who habitually uses intoxicants to excess may be subject to removal (5 U.S.C. 7352).

§ 20.506 Appropriations, legislation and lobbying.

(a) Unless expressly authorized by Congress, employees are prohibited from using any part of the money appropriated by any enactment of Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; this prohibition does not prevent any employee from communicating to Members of Congress on the request of any Member or through proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business (18 U.S.C. 1913).

(b) When acting in their official capacity, employees are required to refrain from promoting or opposing legislation relating to programs of the Department without the official sanction of the property Departmental authority.

(c) The rights of employees, individually or collectively, to otherwise petition Congress, or to a Committee or Member thereof, shall not be interfered with or denied (5 U.S.C. 7211).

§ 20.507 Unlawful organizations.

An employee may not advocate the violent overthrow of our constitutional form of government nor may an employee be a member of an organization that he or she knows advocates the violent overthrow of our constitutional form of government (5 U.S.C. 7311).

§ 20.508 Notary.

An employee is prohibited from charging fees for performance of any notarial act for any employee of the Federal Government who is acting in his or her official capacity, or for any person during the hours of such notary's service to the Government (E.O. 977, Nov. 24, 1908).

§ 20.509 Penalty mail and official stationery.

(a) An employee is prohibited from using any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his or her private letter, packet, package, or other matter in the mail (18 U.S.C. 1719).

(b) Official Government envelopes and official letterhead stationery are Government property that may only be used for authorized purposes. Employees' use of Government envelopes to mail their own personal job applications is not authorized.

§ 20.510 Fraud or false statements in a Government matter.

An employees shall not, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsify, conceal or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry (18 U.S.C. 1001). Special attention is required in the certification of time and attendance reports, applications for employment, request for travel reimbursement, and purchase orders and receiving forms.

§ 20.511 Carrying of firearms.

Employees, except those specifically designated to perform enforcement, police or other official duties requiring the use of firearms, are prohibited from carrying or having in their possession firearms on property under the control of the Secretary. Employees who are officially stationed in parks, refuges, Indian reservations, other Tribal lands or other wilderness areas which are known to be inhabited by wild animals, are permitted, when on those lands, to carry and use firearms for personal protection as permitted by existing policy or as authorized by the park, refuge or area supervisor. Notwithstanding this paragraph, employees who are not on official duty may carry firearms on Departmental lands under the same conditions and in accordance with procedures and authorizations established for members of the general public.

§ 20.512 Labor practices.

Employees are prohibited from striking against the Government of the United States (5 U.S.C. 7311). Additional information regarding affiliation with employee organizations is found in the Department Manual, Part 370, Chapter 711, Labor Management Relations.

Subpart F—Disciplinary and Remedial Actions

§ 20.601 General.

This subpart deals with disciplinary actions and remedial actions for violations, or potential violations, of conflict of interest laws or of the regulations in this part or in 5 CFR part 2635 or 5 CFR part 3501. Disciplinary action may include oral or written warning or admonishment, reprimand, suspension, reduction in grade or pay, removal from position or removal from office. Such action shall be taken in accordance with Departmental policies and procedures, applicable statutes, Executive Orders, regulations, and any applicable collective bargaining agreement provisions. Disciplinary action may be imposed independently from and without prior application of remedial actions, including those remedial actions listed in § 20.602.

§ 20.602 Remedial action.

(a)(1) Remedial action should normally be considered only after attempts to obtain voluntary resolution have failed. Voluntary resolution may include:

(i) Voluntary divestiture;

(ii) Voluntary conversion to securities which are not prohibited, or the holding of which would not violate law or regulation; or

(iii) Voluntary reassignment to another position.

(2) If the bureau Ethics Counselor decides that remedial action is required, such action shall be initiated within a reasonable time, usually 90 days.

(b) Remedial action may include:

(1) *Reassignment or disqualification of the employee.* It may be possible for the employee to be reassigned to another job, or to be disqualified from performing particular duties. Although the number of cases where this remedy can be used should be rare, the possibility should be explored before divestiture of an interest is ordered.

(2) *Waiver.* (i) The Designated Agency Ethics Official (DAEO) is authorized to make a written advance determination pursuant to 18 U.S.C. 208(b)(1) waiving the prohibitions of 18 U.S.C. 208(a) for any Department employee except the Secretary and those employees in the same organization as the DEAO, i.e., the Department's Office of Policy, Management and Budget. The Secretary

or the Deputy Secretary shall issue individual waivers pursuant to 18 U.S.C. 208(b)(1) for employees in the Office of Policy, Management and Budget.

(ii) In the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. App. (including an individual being considered for an appointment to such a position), the DAEO, after review of the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978, 5 U.S.C. App., is authorized to certify in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved.

(iii) The DAEO may grant a waiver under 5 CFR 3501.103(e) from the regulatory restrictions at 5 CFR 3501.103 (b) and (c).

(3) *Divestiture of the interest.* An employee may be required to divest an interest, including outside employment, that is prohibited by law or regulation. Divestiture of the interest shall be ordered in all situations where it is determined by the appropriate official that there is no other satisfactory remedy. Evidence of divestiture must be provided in the form of broker's sale receipt or other appropriate document.

Note to paragraph (b)(3): It may be possible in certain cases for the tax consequences of divestiture to be delayed, if the interest is sold pursuant to a certificate of divestiture issued before the sale by the Director, U.S. Office of Government Ethics. See 5 CFR part 2634, subpart J.

(c) *Authority to order remedial action.* (1) Each bureau Ethics Counselor is authorized to order remedial actions within his or her bureau. The advice of the appropriate Regional Solicitor, the Associate Solicitor—Division of General Law, or the Designated Agency Ethics Official or his or her designee may be sought before such an order is issued. This authority to order remedial action may not be redelegated.

(2) The Deputy Assistant Secretary for Policy is authorized to order remedial actions for employees within the Office of the Secretary, except that the Secretary shall order remedial actions in situations involving the Deputy Secretary.

(d) An employee who fails to comply with an order for remedial action is considered to be in violation of this part and shall be subject to disciplinary action.

§ 20.603 Appealing an order for remedial action.

(a) *When and how to appeal.* An employee has the right to appeal an order for remedial action under § 20.602, and shall have 30 days from the date of the remedial action order to exercise this right before any disciplinary action may be initiated. For appeals of remedial orders issued under § 20.602, the procedures described in 370 DM 771 may not be used in lieu of or in addition to those of this section. Each appeal shall be in writing and shall contain:

(1) The basis for appeal;

(2) Fact(s) supporting the basis; and

(3) The telephone number where appellant can be reached to discuss facts pertinent to the appeal.

(b) *Where to appeal.* (1) Orders for remedial action issued by an Ethics Counselor may be appealed to the Deputy Secretary, whose decision shall be final.

(2) Orders for remedial action issued by the Deputy Secretary may be appealed to the Secretary, whose decision shall be final.

(c) *Review Board analysis and recommendations.* (1)(i) Each appeal shall be considered by a Review Board consisting of:

(A) A program Assistant Secretary selected by the Designated Agency Ethics Official;

(B) The Associate Solicitor or the Deputy Associate Solicitor, Division of General law; and

(C) The Director or Deputy Director of the Departmental Office of Personnel within the Department.

(ii) Assistant Secretaries may delegate authority to serve on the Review Board to a Deputy Assistant Secretary who has not been involved, and who has not advised or made a decision on the issue or on the order for remedial action.

(2) The Deputy Agency Ethics Official or his or her assistant shall serve as secretary to the Review Board, except for cases in which he or she has previously participated. In such cases, the Review Board shall designate an employee who has not previously been involved with the case to serve as secretary.

(3) The Review Board members shall:

(i) Obtain from the appropriate ethics counselor a full statement of actions and considerations which led to the order for remedial action including any supporting documentation or files used by the Ethics Counselor.

(ii) Obtain from the employee all facts, information, exhibits for documents which he or she feels should be considered before a final decision is made.

(iii) The secretary to the Review Board shall prepare a summary of the facts pertinent to the appeal. When appropriate, the Review Board may provide for personal appearance by the appellant before the Review Board if necessary to ascertain the circumstances concerning the appeal or may designate the Review Board secretary or another employee to conduct further fact finding, or may do both. Fact finding procedures shall be carried out by a person(s) who:

(A) Has not been involved in the matter being appealed; and

(B) Does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in, the matter being appealed.

(iv) Establish a file containing all documents related to the appeal, which shall be available to the appellant and his or her representative.

(v) Provide to the official who will decide the appeal an advisory recommendation on the appeal. The views of dissenting members of the Review Board shall also be provided.

(d) *Assurances to the appellant.* Each appellant is assured of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal in presenting an appeal;

(2) A reasonable amount of official time to present the appeal if the employee is otherwise in a duty status;

(3) The right to obtain counseling from an ethics counselor of the Department; and

(4) The right to be accompanied, represented, and advised by a representative of his or her own choosing, except that the Review Board may disallow the choice of an individual as a representative if such representation would result in a conflict of interest or position, would conflict with the priority needs of the Department, or which would give rise to unreasonable costs to the Government.

(e) *Assurances to the appellant's representative.* Each person chosen to represent an appellant is assured of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal; and

(2) A reasonable amount of official time to present the appeal if the representative is an employee of the Department and is otherwise in a duty status.

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