

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

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SOURCE: 62 FR 53718, Oct. 16, 1997, unless otherwise noted.

§ 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) *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.

(4) *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.

[62 FR 53718, Oct. 16, 1997, as amended at 63 FR 34259, June 24, 1998]

§ 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

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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 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 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.

§ 3501.104 Prohibited interests in mining.

(a) *Cross-reference 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

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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.

[62 FR 53718, Oct. 16, 1997; 63 FR 18501, Apr. 15, 1998]

§ 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.* (1) 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

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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, attor-

ney, 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 non-profit 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 (b)(4)(ii) (A) through (D) of this section.

[62 FR 53718, Oct. 16, 1997, as amended at 63 FR 34259, June 24, 1998]