

FEDERAL REGISTER: 42 FR 42540 (August 23, 1977)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 2170 and 2171

State and Federal Conflict of Interest Provisions; Proposed Rules

ACTION: Proposed rule.

SUMMARY: The proposed regulations in Part 2170 establish the conflict of interest provisions applicable to employees of the State regulatory authority performing any function or duty under the Surface Mining Control and Reclamation Act of 1977 in order for the State to be eligible for reimbursements or grants under the Act. The proposed regulations in Part 2171 establish the conflict of interest provisions which Federal employees performing any function or duty under the Act must meet in order to be in compliance with the Act. These regulations are intended to provide the methods by which conflict of interest situations involving employees performing under the Act can be identified and remedied.

DATES: Comments must be received before September 23, 1977.

ADDRESS: Comments should be addressed to: Director, Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Gene Fredriksen or Gabe Paone, Office of Audit and Investigation, U.S. Department of the Interior, Washington, D.C. 20240, AC 202 343-5916.

SUPPLEMENTARY INFORMATION:

Section 201(f) and 517(g) of the Act make it a crime for employees performing any function or duty under the Act to knowingly have a direct or indirect financial interest in any coal mining operation. The Act further directs the Secretary to publish regulations which establish methods for monitoring and enforcing the prohibition, including provisions for the filing and review of financial interest statements.

The Secretary proposes these regulations recognizing the clear Congressional intent that affected employees maintain the highest standards of honesty, integrity and impartiality to avoid even the appearance of conflict of interest.

The concept that affected employees would simply certify that they did not have a direct or indirect financial interest in any coal mining operations was discarded as legally insufficient to sustain criminal prosecutions. Instead, covered employees are required to submit a detailed statement of employment and financial interests to appropriate officials for review. Based on the criteria in these regulations, the reviewing official will determine whether a conflict of interest exists and what the proper remedial action should be.

The direct or indirect financial interests of an employee's spouse, minor child, or other relatives who are full-time members of the employee's home are considered to be the financial interests of the employee. Disclosure of these interests will bring to the review's attention any direct or indirect financial interests in coal mining operations which the employee may be deriving from interests of other close family members and relatives. Disclosure will also preclude employees from transferring prohibited financial interests to close family members or relatives in order to avoid the provisions in the Act.

In keeping with the legislative intent and at the suggestion of several States, the proposed regulations place as much responsibility as possible upon the individual States. States are responsible for resolving employee conflict of interest situations, for initiating action to impose the penalties of the Act within their existing laws, regulations and personnel programs in order to meet the requirements of the Act. Care has been taken to specifically separate the responsibilities of the Federal Government from those of the individual States and to guard against the imposition of excessive Federal requirements upon the States.

The same high standards applicable to covered employees of the State agencies apply to covered employees of the Federal Government under the separate regulations in Part 2171. With regard to covered employees of other Federal

agencies, it is proposed that each agency have as much latitude as possible in resolving conflict of interest situations and in enforcing the conflict of interest requirements within these regulations. Other Federal agencies implementation must be consistent with the regulations developed for employees of the Department of the Interior.

DRAFTING INFORMATION

These regulations were prepared by: Gene Fredriksen and Gabe Paone under the general supervision of Paul Reeves, Office of Surface Mining Task Force, Department of the Interior.

Interested persons may submit written comments on the proposed regulations to the Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, no later than September 23, 1977.

NOTE. - The Department of the Interior has determined that this document does not contain a major proposal requiring the preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: August 17, 1977.

ROBERT HERBST, *Acting Secretary of the Interior.*

It is proposed to Amend Title 30 by adding Chapter VII, Office of Surface Mining Reclamation and Enforcement. It is proposed to add Parts 2170 and 2171, Conflict of Interest, to Title 30, Chapter VII, to read as follows:

PART 2170 - CONFLICT OF INTEREST PROVISIONS FOR STATE EMPLOYEES

Section.

2170.1	Purpose.
2170.2	Objectives.
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2170.11	Who shall file.
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2170.17	What to report.
2170.19	Resolving conflicts of interest.
2170.21	Appeals procedures.

AUTHORITY: Public Law 95-87, Section 517(g).

SECTION 2170.1 - PURPOSE.

This part sets forth the minimum conflict of interest policies and procedures that States must establish and use in order to be eligible for reimbursement of costs of enforcing and administering the initial regulatory program under Section 502, or for grants for developing, administering and enforcing a state regulatory program under Section 705, or to assume primary regulatory authority under Section 503 of the Act (Pub.L. 95-87). Compliance with the policies and procedures in this part will satisfy the requirements of Section 517(g) of the Act. Section 517(g) prohibits certain employees of the State Regulatory Authority from having any direct or indirect financial interest in any underground or surface coal mining operation. The regulations in this part are applicable to employees of the State Regulatory Authority as defined in Section 2170.5.

SECTION 2170.2 - OBJECTIVES.

The objectives of this part are:

(a) To ensure that the States adopt a standard program for implementing the conflict of interest provisions in Section 517(g) of the Act.

(b) To establish methods which will ensure, as required by Section 517(g) of the Act, that each employee of the State Regulatory Authority who performs any function or duty under the Act does not have a direct or indirect financial interest in any underground or surface coal mining operation.

(c) To establish the methods by which the monitoring, enforcing and reporting responsibilities of the Secretary of the Interior as stated in Section 517(g) will be accomplished.

SECTION 2170.3 - AUTHORITY.

(a) The Secretary of the Interior is authorized by Public Law 95-87 to:

(1) Establish the methods by which he and State officials will monitor and enforce the provisions contained in subsection 517(g) of the Act;

(2) Establish appropriate provisions for employees of the State Regulatory Authority who perform any function or duty under the Act to file a statement and supplements thereto concern any financial interest which may be affected by subsection 517(g), and

(3) Report annually to the Congress, actions taken and not taken during the preceding calendar year under subsection 517(g) of the Act.

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(b) The Governor of the State, the Head of the State Regulatory Authority, or such other State official designated by State law, is authorized to expand the provisions in this part in order to meet the particular needs within the State.

(c) The Office of Audit and Investigation, U.S. Department of the Interior is authorized to conduct on behalf of the Secretary periodic audits related to the provisions contained in Section 517(g) of the Act and related to the provisions in this Part. These audits will be conducted on a cyclical basis or upon request of the Secretary or the Director.

SECTION 2170.4 - RESPONSIBILITY.

(a) The Head of each State Regulatory Authority shall:

(1) Provide advice, assistance, and guidance to all State employees required to file statements pursuant to Section 2170.11 of this part;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Resolve conflict of interest situations by ordering or initiating remedial action or by reporting the violations to the Director who is responsible for initiating action to impose the penalties of the Act;

(4) Certify on each statement that review has been made, that conflicts of interest or prohibited holdings have been resolved, and that no conflicts of interest exist;

(5) Submit to the Director such statistics and information he or she may request to enable preparation of the required annual report to Congress;

(6) Submit to the Director the initial listing and the subsequent annual listings of positions as required by Section 2170.11(b), (c) and (d) of this part;

(7) Furnish a blank statement by December 15 of each year, to each State employee required to file a statement, and

(8) Inform annually each State employee required to file a statement with the Head of the State Regulatory Authority, or such other official designated by State law or regulation, of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) The Director, Office of Surface Mining Reclamation and Enforcement, shall:

(1) Provide advice, assistance, and counseling to the Heads of all State Regulatory Authorities concerning conflict of interest matters;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each Head of the State Regulatory Authority. The Director will review the statement to determine if the Head of the State Regulatory Authority has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Recommend to the State Attorney General, or such other State official designated by State law or the Governor of the State, the remedial action to be ordered or initiated, recommend to the Secretary that action be taken to impose the

penalties of the Act, or recommend to the Secretary that other appropriate action be taken with respect to reimbursements, grants, or state programs;

(4) Certify on each statement filed by the Head of the State Regulatory Authority that the State has completed the review of the statement, that conflicts of interest have been resolved, and that no conflicts of interest exist;

(5) Monitor the conflict of interest program by using reports requested from Heads of State Regulatory Authorities and by using periodic audits performed by the Office of Audit and Investigation, U.S. Department of the Interior.

(6) Prepare for the Secretary of the Interior a consolidated report to the Congress as part of the annual report submitted under Section 706 of the Act, on the actions taken and not taken during the preceding calendar year under Section 517(g);

(7) Designate if so desired other qualified Office of Surface Mining Reclamation and Enforcement employees as Assistant Conflict of Interest Counselors to assist with the operational duties associated with filing and reviewing the statements from the Heads of each State Regulatory Authority;

(8) Furnish a blank statement by December 15 of each year, to the Head of each State Regulatory Authority, and

(9) Inform annually, the Head of each State Regulatory Authority of the requirement to file his or her statement with the Director and supply the name, address, and telephone number of the person whom they may contact for advice and counseling.

(c) State Regulatory Authority employees shall:

(1) Maintain especially high standards of impartiality by avoiding employment situations with or investments in business entities involved with coal mining operations;

(2) File a fully completed statement of employment and financial interests 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on February 1 of each year;

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

SECTION 2170.5 - DEFINITIONS.

Act. Means the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87.

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.

Conflict. Means a situation where an employee's public duty is or will be affected by his or her direct or indirect financial interest, such as when the employee owns or has an interest in a company, land or other entity engaged in underground or surface coal mining operations which is or will be affected by operations or decisions he or she makes or in which he or she is involved.

Direct or Indirect Financial Interest. Means ownership or part ownership by an employee in his or her own name, or in the name of another person where the employee still reaps benefits of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and, means any other situation where the employee may benefit from his or another person's holding in or salary from coal mining operations. Direct or indirect financial interests include employment pensions, creditor, real property and other financial relationships of the employee and his or her spouse, minor child, and other relatives, including in-laws, who live in the employee's home.

Director. Means the Director of the Office of Surface Mining Reclamation and Enforcement within the U.S. Department of the Interior.

Employee. Means any person employed by the State Regulatory Authority who performs any function or duty under the Act. State officials may through State law or regulations expand this definition to meet their program needs.

Office. Means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Secretary. Means the Secretary of the U.S. Department of the Interior.

State Regulatory Authority. Means that office in each State which has primary responsibility at the State level for administering this Act. Until an office is established under the provisions of Section 503 or Section 504 of the Act, this term shall refer to those existing State offices having primary jurisdiction for regulating, enforcing, and inspecting any surface coal

mining and reclamation operations within the State during the interim period between the effective date of the Act and the establishment of the State Regulatory Authority under Section 503 or Section 504.

SECTION 2170.6 - PENALTIES.

(a) Criminal penalties are imposed by Section 517(g) of the Surface Mining Control and Reclamation Act of 1977, Pub.L. 95-87. Section 517(g) prohibits each employee of the State Regulatory Authority who performs any function or duty under the Act from having a direct or indirect financial interest in any underground or surface coal mining operation. The Act provides that whoever knowingly violates the provisions of subsection 517(g) shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both.

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(b) Regulatory penalties are imposed by this part. The provisions in Section 517(g) of the Act make compliance with the conflict of interest requirements a condition of employment for employees of the State Regulatory Authority who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 517(g) and will be subject to removal from his or her position.

SECTION 2170.11 - WHO SHALL FILE.

(a) The Act applies to each State Regulatory Authority employee performing any function or duty under the Act. Each employee shall file a statement of employment and financial interests, including a certification that he or she is aware that he or she has no direct or indirect financial interest in any underground or surface coal mining operation and that he or she is in compliance with these requirements except as disclosed on the statement. Employees who occupy a position which has been determined by the Head of the State Regulatory Authority not to involve performance of any function or duty under the Act or who are no longer employed by the State Regulatory Authority at the time a filing is due, are not required to file a statement.

(b) The Head of each State Regulatory Authority shall prepare a list of those positions within the State Regulatory Authority that do not involve performance of any functions or duties under the Act. Only those employees who occupy a listed position will be exempted from the filing requirements of Section 517(g) of the Act.

(c) The Head of each State Regulatory Authority shall prepare and submit to the Director, an initial listing of positions that do not involve performance of any functions or duties under the Act within 60 days of the effective date of these regulations.

(d) The Head of each State Regulatory Authority shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Director and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Secretary, the Director, or the Head of the State Regulatory Authority may revise the listing by the addition or deletion of positions at any time they determine such revisions are required to carry out the purpose of the law or the regulations of this part. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

SECTION 2170.13 - WHEN TO FILE.

(a) Employees performing functions or duties under the Act shall file:

- (1) Within 120 days of the effective date of these regulations, and
- (2) Annually on February 1 of each year.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file:

- (1) At the time of entrance to duty, and
- (2) Annually on February 1 of each year.

(c) Employees are not required to file an annual statement on February 1 if they filed their initial statement within two months prior to February 1. For example, an employee entering duty on December 1, 1978 would file a statement on that

date. Because December 1 is within two months of February 1 the employee would not be required to file his next annual statement until February 1, 1980.

SECTION 2170.15 - WHERE TO FILE.

(a) The Head of the State Regulatory Authority shall file his statement with the Director. All other employees, as provided in Section 2170.11, shall file their statement with the Head of the State Regulatory Authority or such other official as may be designated by State law or regulation.

SECTION 2170.17 - WHAT TO REPORT.

(a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are fulltime residents of the employee's home. The report shall be on OSM Form 2170-1 as provided by the Office. The statement consists of three major parts, (1) A listing of all direct and indirect employment, security, real property and creditor financial interests held during the course of the preceding year, (2) certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (3) a certification by the reviewer that the form was reviewed and that no conflicts of interest exist.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) *Employment.* Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the State Regulatory Authority.

(2) *Securities.* Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real Property.* Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) *Creditors.* Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan, credit unions, and the like) which are chartered to provide commercial or personal credit. Also, excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and, if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge, (i) none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2)(i) The following examples of financial interests would be prohibited financial interests because they represent an interest in an underground or surface coal mining operation and would be shown as exceptions on the employee certification:

(A) Companies which operate coal mines regardless of the nature of their major business, (i.e. public utilities, steel companies, etc.),

(B) Spouse's employment with a company engaged in coal mining operations, such as described in the preceding example,

(C) Outside employment such as part time or consultant work done for a coal mining operations company,

(D) Payments received for easements to or from coal mine operation sites,

(E) Retirement benefits which are not or will not be guaranteed,

(F) Ownership or use of lands associated with active coal mining operations.

(ii) These examples are not all-inclusive and are presented to give guidance to employees required to file a statement. An employee is expected to (A) Have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the

spouse and other covered relatives, and (B) be aware of the information contained in the annual financial statements or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the certification must provide enough information for the Head of the State Regulatory Authority to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should: (i) List the prohibited financial interests;

[Page 42543] (ii) Show the number of shares or the estimated value of the prohibited financial interests;

(iii) Explain in some detail those other prohibited financial interest situations such as spouse's employment with mining operations, inherited mineral rights attached to land currently being mined, etc., and

(iv) Include any information which the employee believes should be considered in determining whether or not a conflict exists which must be corrected.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in Section 2170.6(a).

SECTION 2170.19 - RESOLVING CONFLICTS OF INTEREST.

(a) Actions to be taken by the Head of the State Regulatory Authority:

(1) Remedial action to effect resolution. If an employee has a prohibited direct or indirect financial interest, the Head of the State Regulatory Authority shall promptly advise the employee that remedial action which will resolve the conflict of interest is required within 90 days.

(2) Remedial action may include: (i) Reassignment of the employee to another job where no such conflict would exist;

(ii) Divestiture of the financial interest which creates the conflict; or

(iii) Other appropriate action which either eliminates the direct or indirect financial interest or eliminates the situation which creates the conflict.

(3) Reports of non-compliance. If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the Head of the State Regulatory Authority shall report the facts of the situation to the Director who shall determine whether action to impose the penalties prescribed by the Act should be initiated. The report to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director's determination, including a statement of actions being taken at the time the report is made.

(b) Actions to be taken by the Director:

(1) Remedial action to effect resolution. Violations of the regulations in this part by the Head of a State Regulatory Authority, will be cause for remedial action by the Governor of the State or other appropriate State official based on recommendations from the Director on behalf of the Secretary. The Governor or other appropriate State official shall promptly advise the Head of the State Regulatory Authority that remedial action which will resolve the conflict of interest is required within 90 days.

(2) Remedial action should be consistent with the procedures prescribed for other State employees by Section 2170.19(a)(2).

(3) Reports of non-compliance. (i) If 90 days after the Head of a State Regulatory Authority is notified to take remedial action the Governor or other appropriate State official notifies the Director that the Head of the State Regulatory Authority is not in compliance with the Act and these regulations, the Director shall report the facts of the situation to the Secretary who shall determine whether action to impose the penalties prescribed by the Act, or to impose the eligibility restrictions prescribed by Section 2170.1 should be initiated.

(ii) Within 30 days of receipt of a non-compliance report from the Head of a Regulatory Authority under Section 2170.19(a)(2), the Director shall notify the Head of the State Regulatory Authority and the employee involved of additional action to be taken. Actions which the Director may take include but are not limited to the granting of additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

SECTION 2170.21 - APPEALS PROCEDURES.

Employees have the right to appeal an order for remedial action under Section 2170.19, and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Employees other than the Head of the State Regulatory Authority, may file their appeal, in writing, through established procedures within their particular State.

(b) The Head of the State Regulatory Authority may file his appeal, in writing, with the Director who will refer it to the Appeals Board within the Department of the Interior.

PART 2171 - CONFLICT OF INTEREST PROVISION FOR FEDERAL EMPLOYEES

Section

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AUTHORITY: Pub. Law 95-87, Section 201(f).

SECTION 2171.1 - PURPOSE.

This part sets forth the minimum conflict of interest policies and procedures to be followed by Federal employees to satisfy the requirements of Section 201(f) of the Act. The requirements of this part are in addition to Executive Order 11222 of May 8, 1965, and other applicable regulations related to conflict of interest. Section 201(f) prohibits certain Federal employees from having any direct or indirect financial interest in underground or surface coal mining operations. The regulations of this part are applicable to Federal employees as defined in Section 2171.3.

SECTION 2171.2 - OBJECTIVES.

The objectives of this part are:

(a) To ensure that affected Federal agencies adopt a standard program for implementing the conflict of interest provisions in section 201(f) of the Act.

(b) To establish methods which will ensure, as required by section 201(f) of the Act, that each Federal employee who performs any function or duty under the Act does not have a direct or indirect financial interest in an underground or surface coal mining operation.

(c) To establish the methods by which the monitoring enforcing and reporting responsibilities of the Director and the Secretary of the Interior under Section 201(f) will be accomplished.

SECTION 2171.3 - DEFINITIONS.

Act, means the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87.

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.

Conflict, means a situation where an employee's public duty is or will be affected by his or her direct or indirect financial interest, such as when the employee owns or has an interest in a company, land, or other entity, engaged in underground or surface coal mining operations which is or will be affected by operations or decisions he or she makes or in which he or she is involved.

Direct or indirect financial interest, means ownership or part ownership by an employee in his or her own name or in the name of another person where the employee still reaps benefits, of lands, stocks, bonds, debentures, warrants, partnership shares or other holdings and means any other situation where the employee may benefit from his or another person's holding in or salary from coal mining operations. Direct or indirect financial interests includes employment, pensions, creditor, real property and other financial relationships of the employee and his or her spouse, minor child and other relatives, including in-laws who live in the employee's home.

Director, means the Director or Acting Director of the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

Employee, means any person employed by the Office of Surface Mining Reclamation and Enforcement within the Department of the Interior and any other person employed by the Federal government who performs duties under the Act without regard to the duration or nature of his or her appointment.

Office, means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Other Federal agency, means any executive Federal agency or office or part thereof not a part of the Department of the Interior, and includes, but is not limited to, the following agencies: The Department of Agriculture, the Department of Justice, the Corps of Engineers, the Environmental Protection Agency, the Council on Environmental Quality and the Energy Research and Development Administration.

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Secretary, means the Secretary of the United States Department of the Interior.

SECTION 2171.4 - AUTHORITY.

(a) The Director is authorized by Public Law 95-87 to:

- (1) Establish the methods by which the provisions in Section 201(f) of the Act will be monitored and enforced.
- (2) Establish appropriate provisions for all employees who perform any function or duty under the Act to file a statement and supplements thereto concerning their financial interests which may be affected by Section 201(f) and
- (3) Report annually to the Congress on actions taken and not taken during the preceding calendar year under subsection 201(f) of the Act.

(b) Other Federal agencies with employees who perform functions or duties under the Act may adopt conflict of interest regulations pursuant to the Act which are consistent with the requirements in this Part. If any such agency does not adopt regulations pursuant to this part, that agency shall enter into a memorandum of understanding with the Director, to have the employees of that agency who perform functions or duties under the Act file their statements with the Director. The Director will review statements filed with him, applying the regulations of the Department of the Interior. Where the Director determines that remedial action is necessary, he will refer the case to the employing agency with a recommendation as to the action to be taken.

(c) The Office of Audit and Investigation within the U.S. Department of the Interior is authorized to conduct or arrange for the conduct of periodic audits related to the provisions contained in Section 201(f) of the Act and related to the provisions in this Part. These audits will be conducted on a cyclical basis or upon request of the Secretary of the Interior or Director.

SECTION 2171.5 - RESPONSIBILITY.

(a) The Director, the Head of each other Federal Agency, and the Head of each other bureau or office within the Department of the Interior, have the following common responsibilities concerning employees within their organizations performing any functions or duties under the Act, and shall:

(1) Provide advice, assistance and counseling to employees concerning conflict of interest matters related to the Act;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee to determine if the employee has correctly identified those listed employment and financial interest in an underground or surface coal mining operation;

(3) Certify on each statement filed by an employee that the review of the statement is completed, that conflicts of interest if any, have been resolved, and that no conflicts of interest exist;

(4) Resolve conflict of interest situations by promptly notifying and ordering the employee to take remedial action within 90 days, or by initiating action to impose the penalties of the Act;

(5) Furnish a blank statement by December 15 of each year to each employee required to file a statement within his or her employing organization;

(6) Inform annually each employee required to file a statement within his or her employing organization of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) In addition to the common responsibilities in Section 2171.5(a) the Director shall:

(1) Monitor the conflict of interest program by using reports requested from the Heads of other Federal agencies, from the Heads of other bureaus and offices within the Department of the Interior, and by using periodic audits performed by the U.S. Department of the Interior, Office of Audit and Investigation.

(2) Prepare for the Secretary a consolidated report to the Congress as part of the annual report submitted under Section 706 of the Act, on the actions taken and not take under Section 201(f) during the preceding calendar year;

(3) Refer recommendations to officials of other Federal Agencies concerning those cases requiring remedial action for employees of the other Federal Agency who filed with the Director because that other Federal Agency did not choose to adopt its own conflict of interest regulations pursuant to the Act;

(4) Report to the Solicitor, U.S. Department of the Interior, through the Office of Audit and Investigation, U.S. Department of the Interior, cases of knowing violations of the provisions in Section 201(f). The Solicitor will transfer such reports to the U.S. Department of Justice;

(5) Designate, if so desired, other qualified Office employees as assistant conflict of interest counselors to assist with the operational duties associated with filing and reviewing financial statements;

(6) Furnish an adequate supply of blank statements to the Heads of those other Federal agencies which decide to have their employees file with the Director, and

(7) Submit to the Department of the Interior Ethics Counselor such statistics and information he may request in accordance with 43 CFR 20.735-17 as adopted.

(c) In addition to the common responsibilities in Section 2171.5(a), the Head of each other Federal Agency with employees performing any functions or duties under the Act shall:

(1) Decide whether to adopt independent procedures for the filing and review of statements or to enter into a memorandum of understanding with the Director that the Department of the Interior will provide and review the statements and recommend any necessary remedial action to the Head of the employing agency;

(2) Submit to the Director such statistics and information the Director may request to enable preparation of the required annual report to the Congress, and to ensure uniform application of the provision in Section 201(f) of the Act, and

(3) Report to the Director cases of knowing violations of the provisions in Section 201(f). The Director will transmit the report to the Office of Audit and Investigation and to the Solicitor in the Department of the Interior. The Solicitor will transfer such reports to the U.S. Department of Justice;

(d) In addition to the common responsibilities in Section 2171.5(a), the Heads of other Interior Department bureau or offices with employees performing any functions or duties under the Act shall:

(1) Submit to the Director such statistics and information the Director may request to enable preparation of the required annual report to Congress, and to ensure uniform application of provisions in Section 201(f) of the Act;

(2) Submit to the Department of the Interior Ethics Counselor such statistics and information he may request in accordance with 43 CFR 20.735-17 as adopted, and

(3) Report to the Director cases of knowing violations of the provisions in Section 201(f).

(e) Employees shall:

(1) Maintain especially high standards of impartiality by avoiding employment situations with or investments in business entities involved with coal mining operations;

(2) File a fully completed statement of employment and financial interests 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on February 1 of each year, and

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

SECTION 2171.6 - PENALTIES.

(a) Criminal penalties are imposed by Section 201(f) of the Surface Mining Control and Reclamation Act, Public Law 95-87, which prohibits each employee of the Office or any other Federal employee who performs any function or duty under the Act from having a direct or indirect financial interest in underground or surface coal mining operations. The Act provides that whoever knowingly violates the provisions of subsection 201 (f) 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.

(b) Regulatory penalties are imposed by this part. The provisions in Section 201(f) of the Act make compliance with the conflict of interest requirements a condition of employment for all Office employees and for other employees of the Federal government who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 201(f) and will be subject to removal from his or her position.

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SECTION 2171.11 - WHO SHALL FILE.

(a) Every employee in the Office is required to file a statement of employment and financial interests.

(b) Any other Federal employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. The Head of each other Federal agency and the Heads of other Interior bureaus and offices, shall prepare and submit a report within 60 days of the effective date of these regulations, either listing the Federal positions identified as performing functions or duties under the Act, or listing the organizational unit within the organization showing the total number of employees within the unit who must file a statement. Revision to the listing or certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Secretary, the Director, or the Heads of the other affected Federal organizations may revise the list by the addition or deletion of positions at any time such revisions are required to carry out the purpose of the law or regulations of this Part. Additions to or deletions from the list of positions are effective upon notification to the incumbents.

SECTION 2171.13 - WHEN TO FILE.

(a) Employees currently performing functions or duties under the Act will be required to file:

- (1) Within 120 days of the effective date of these regulations, and
- (2) Annually on February 1 of each year.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file:

- (1) At the time of entrance on duty, and
- (2) Annually on February 1 of each year.

(c) Employees are not required to file an annual statement if they have filed an initial statement within two months prior to February 1. For example, an employee entering duty on December 1, 1978 would file a statement on that date. Because December 1 is within two months of February 1 the employee would not be required to file his next annual statement until February 1, 1980.

SECTION 2171.15 - WHERE TO FILE.

(a) Each Office employee shall file his or her statement of employment and financial interests with the Director.

(b) Each Department of the Interior employee, who is not an Office employee but does perform any function or duty under the Act, shall file a statement of employment and financial interests with their appropriate Ethics Counselor as identified in 43 CFR 20.735-22(c).

(c) Each employee of an other Federal agency who performs a function or duty under the Act shall file a statement of employment and financial interests with the official designated by the Head of the other Federal agency.

SECTION 2171.17 - WHAT TO REPORT.

(a) Each employee shall report all information required on the statement of employment and financial interest of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report shall be on a form provided by the Office. The statement consists of three major parts, (1) a listing of all direct and indirect employment, security, real property and creditor financial interests held during the course of the preceding year, (2) an employee signed certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (3) a certification by the reviewer that the form was reviewed and that no conflicts of interest exist.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) *Employment.* Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Federal government under the Act.

(2) *Securities.* Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real Property.* Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) *Creditors.* Debts owed to business entities and non-profit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and, if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge, (i) none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2)(i) The following examples of financial interests would be prohibited financial interests because they represent an interest in an underground or surface coal mining operation and would be shown as exceptions on the employee certification:

(A) Companies which operate coal mines regardless of the nature of their major business, (i.e. public utilities, steel companies etc.)

(B) Spouse's employment with a company engaged in coal mining operations, such as described in the preceding example,

(C) Outside employment such as part time or consultant work done for a coal mining operations company,

(D) Payments received for easements to or from coal mine operation sites,

(E) Retirement benefits which are not or will not be guaranteed, and

(F) Ownership or use of lands associated with active coal mining operations.

(ii) These examples are not all-inclusive and are presented to give guidance to employees required to file a statement. An employee is expected to (A) have complete knowledge of his or her personal involvement in business enterprise such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and (B) be aware of the information contained in the annual financial statements or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the certification must provide enough information for the Director, the Head of an other Federal agency, or the Head of another Interior Department bureau or office to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(i) List the prohibited financial interests;

(ii) Show the number of shares or the estimated value of the prohibited financial interests;

(iii) Explain in some detail those other prohibited financial interest situations such as spouse's employment with mining operations, inherited mineral rights attached to land currently being mined, etc., and
[Page 42546] (iv) Include any information which the employee believes should be considered in determining whether or not a conflict exists which must be corrected.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement or certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in Section 2171.6(a).

SECTION 2171.19 - RESOLVING CONFLICTS OF INTEREST.

Actions to be taken by the Director, the Heads of other Federal agencies, and the Heads of other affected Interior Department bureau and offices include:

(a) Remedial action to effect resolution. If an employee has a prohibited direct or indirect financial interests, the Head of the organizational entity (Department, bureau, office etc.) where the employee works shall promptly advise the employee that remedial action which will resolve the conflict of interest is required within 90 days.

(b) Remedial action may include: (1) Reassignment of the employee to another job where no conflict of interest would exist, (2) Divestiture of the financial interests which creates the conflict, or (3) Other appropriate action which either eliminates the direct or indirect financial interest or eliminates the situation which creates the conflict.

(c) Reports of non-compliance. If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the official, other than the Director, who ordered the remedial action shall report the facts of the situation to the Director who shall determine whether action to impose the penalties prescribed by the Act should be initiated. The reports to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director's determination, including a statement of actions being taken at the time the report is made. Within 30 days of receipt of a non-compliance report, the Director shall notify the Head of the employing organization and the employee involved of additional action to be taken. Actions which the Director may take include but are not limited to the granting of additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

SECTION 2171.21 - APPEALS PROCEDURES.

Employees have the right to appeal an order for remedial action under Section 2171.19, and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Office employees and other Department of the Interior employees may file their appeal, in writing, in accordance with the provisions in 43 CFR 20.735-25(b).

(b) Employees of other Federal agencies may file their appeal, in writing, in accordance with the established procedures of their employing agency.

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