

FEDERAL REGISTER: 42 FR 56060 (October 20, 1977)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 705 and 706

Monitoring and Enforcing Restrictions of Financial Interests of State and Federal Employees Performing Functions or Duties Under Surface Mining Control and Reclamation Act of 1977

ACTION: Final rules.

SUMMARY: The regulations in Part 705 establish provisions for monitoring and enforcing financial interest restrictions 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 706 establish provisions for monitoring and enforcing financial interest restrictions which apply to Federal employees performing any function or duty under the Act in order to be in compliance with the Act. These regulations provide the methods by which prohibited financial interest situations involving employees performing under the Act can be identified and remedied.

EFFECTIVE DATE: November 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4237.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On August 23, 1977, Interior issued proposed regulations under Parts 2170 and 2171 to implement Sections 201(f) and 517(g) of the Act (42 FR 42540-42546). As final rules, these Parts are 705 and 706, respectively.

Sections 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 promulgates 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 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 reviewer's attention any direct or indirect financial interests in coal mining operations which the employee may be deriving from interests of other 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, these regulations place as much responsibility as possible upon the individual States. States are responsible for resolving prohibited financial interest situations, and 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 706. With regard to covered employees of other Federal agencies, it is proposed that each agency have as much latitude as possible in resolving prohibited financial situations and in enforcing the requirements within these regulations. Other Federal agencies' implementation must be consistent with the regulations developed for employees of the Department of the Interior.

II. COMMENTS

The Director, Office of Surface Mining Reclamation and Enforcement, received 15 written comments and 12 oral comments on the proposed rules published in the FEDERAL REGISTER on August 23, 1977. Most of the comments received were addressed to Part 705 implementing Section 517(g) for State employees. Where changes have been made in response to these comments, the same changes have been adopted in Part 706 applicable to Federal employees.

Subsequent paragraphs discuss the major comments received.

1. Authority to enforce the regulations. Two commenters took exception to the provisions of Section 705.1 that the States must adopt the minimum provisions in proposed Part 705 in order to be eligible for reimbursements under Section 502, grants under Section 705, or primary regulatory authority under Section 503 of the Act. One commenter stated that there is no legislative authority for the Secretary to require adoption of the financial interest provisions as a prerequisite to the implementation of Section 503 or 705. The second commenter stated that there is no statutory authority for withholding reimbursements to the States under Section 502 of the Act on the basis that the States do not have regulations relating to direct and indirect financial interests which meet the minimum Federal requirements.

These views were not accepted. Section 517(g) of the Act directs the Secretary to "establish methods by which the provisions of this subsection will be monitored and enforced". No stipulation is placed on what the methods can or cannot entail. Further statutory support for the methods proposed is found in Section 201(c)(2) which states: "The Secretary, acting through the Office, shall publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act". It has been determined that (i) adoption by the States of the minimum financial interest provisions in Part 705 of these regulations is necessary to carry out the purposes and provisions of Section 517 (g) of the Act, and (ii) the most effective enforcement method available to ensure that the States adopt these financial interest provisions is to tie such adoption to the desirable program provisions of Section 502 reimbursement funds, Section 705 grant funds, and Section 503 State program approval.

Similarly, three commenters objected to the provisions of Section 705.6(b) that an employee who fails to file the required financial interest statement would be in violation of a condition of employment and therefore be subject to removal from his or her position. All three commenters stated that the proposed requirement goes beyond the statutory authority of the Act by attempting to expand on the penalties provided in the Act. In addition, one commenter misinterpreted the proposed provisions in Section 705.6(b) by suggesting that the provisions mean that the Federal Government would have authority to order removal of a State employee found to have a prohibited interest.

These views were rejected on the basis that (i) Sections 201(f) and 517(g) prohibit certain Federal employees and any State Regulatory Authority employees who perform any functions or duties under the Act from having a direct or indirect financial interest in any underground or surface coal mining operation, and (ii) without a complete financial statement it could not independently be determined if an employee is in compliance with Section 517(g). Therefore, filing of the statement does in fact become a condition of employment both for certain Federal employees and State Regulatory Authority employees who perform functions or duties under the Act.

2. Effective date of monitoring and enforcement procedures. Three commenters questioned the requirement of Section 705.13(a)(1) to obtain statements of employment and financial interest from State employees within 120 days of the enactment of these regulations. A Federal agency sought a deferral to March 31, to make the filing date compatible with other conflict of interest filing requirements in that agency. One State agency believed the 120 day time frame was unrealistic and another contended the first filing should be as late as February 1979, the deadline for State program submission.

{56061} Under the Administrative Procedure Act, these regulations go into effect 30 days after publication. Therefore, it is necessary to provide prompt assistance to affected employees in identifying and resolving any prohibited financial interest situations. The 120 day time frame for filing was selected as a practical limit based on consultations with numerous State officials during the original drafting of these regulations. This initial filing requirement is being retained in Sections 705.13(a)(1) and 706.13(a)(1). To provide more administrative flexibility for subsequent annual filings, the specified February 1 date has been modified to provide for the Director's approval of some other date insofar as such other date still permits the Director to meet reporting requirements to the Congress.

One commenter suggested that while more than 90 days would not ordinarily be required, the time required for remedial action to resolve a prohibited interest for a State employee be increased from 90 days to 180 days in order to provide

additional time for remedial action when this would minimize financial loss to the employee. The commenter also suggested that the Head of the State Regulatory Authority be provided an additional 30 days after the 180 day period expired to report noncompliance cases to the Director.

These changes have not been adopted. In most instances, 90 days should be a reasonable and sufficient time period in which to resolve prohibited financial interests, within the intent of Section 517(g), particularly in consideration of the criminal penalty that may apply in such instances. In addition, Section 705.19(b)(3)(i) of the regulations provides that the Director may, after receiving a noncompliance report from the Head of a State Regulatory Authority, grant additional time to the Head of the State Regulatory Authority for the resolution of prohibited interests. The Department, however, prefers to treat such extensions of time as exceptions beyond 90 days rather than the rule. Also, while it is recognized that noncompliance situations may not be reported precisely on the 90th day, prompt reporting is expected. This should be less than 30 days except in rare instances.

3. Proposals to delete or change procedural requirements. One commenter suggested deletion of many procedural provisions of these regulations, either because they required undue effort or because there was no authority under the Act for such procedures. Among the more significant changes of this nature sought by the commenter was deletion of requirements that: (1) The Head of the State Regulatory Authority and the Director determine that employees had correctly identified prohibited interests from those listed on their statement of employment and financial interests Sections 705.4(a)(2) and (b)(2); (ii) the Head of the State Regulatory Authority and the Director determine that prohibited interests have been resolved (Sections 705.4(a)(4) and (b)(4)); (iii) appeals procedures be established outside of those which already exist for dealing with criminal penalties (Sections 705.21), and (iv) employees provide details regarding prohibited interests (Section 705.17(c)(3)). After careful reconsideration of these and other procedures recommended for deletion, it has been concluded that these are in fact necessary and consistent with the Section 517(g) requirement that methods be established by which provisions of this section of the Act will be monitored and enforced, including appropriate provisions for filing and review of statements.

One commenter stated that requirements of Sections 705.11(b), (c), and (d) for the Head of the State Regulatory Authority to prepare and submit lists of positions not performing functions or duties under the Act is a tremendous burden and meaningless. A positive list should be required. Based on this comment, new wording was selected to lessen the reporting burden. Heads of multifaceted State Regulatory Authorities now may list the title of entire boards, offices, bureaus, or divisions within the State Regulatory Authority which do not perform functions or duties under the Act. This means that the list of personnel not performing functions or duties under the Act will be limited to only those positions on boards or in offices, bureaus or divisions which are responsible for implementing any provisions of the Act. Subpart 705.11 has been changed accordingly.

The justification for maintaining a negative listing (that is a list of positions not performing under the Act) is that such a listing will assist the Secretary with his responsibility for monitoring and enforcing the provisions of Section 517(g). Specifically, the monitoring responsibility will include audits to determine if the States are complying with the provisions in Section 517(g) of the Act. One important aspect of these provisions will be the justification criteria being used to identify employees not performing any functions or duties under the Act. It is this justification and not a justification for covered employees which is most likely to be requested by members of Congress or others who wish to review the application of Section 517(g) provisions. Consequently, the suggestion for using a positive listing is not adopted.

One commenter suggested deletion of the prohibition against employment in coal mining operations because the word "employment" does not appear in Section 517(g) of the Act. Similarly, the commenter requested deletion of references to "security", "real property" and "creditor" on the basis that there is no authority in Section 517(g) to cover these types of financial interests. These changes have not been adopted. The accepted definitions of "interest" include the right to a benefit, clearly a situation which pertains to employment, ownership and creditor relationships. Further, the existence of employee/employer, ownership and creditor relationships that conflict with official duties is the type of situation that Section 517(g) intended to prevent.

4. Definitions,

a. Covered employees. - Five commenters said that the terms "employee" and "function or duty under the Act" were not adequately defined in Section 705.5. They suggested various groups should be excluded from the definition, i.e. State consultants, secretaries, receptionists, clerical personnel, lab personnel, and advisory board or commission members.

Based on the Department's responsibility to develop definitive regulations which implement the Act, and in order to enhance consistency between and among the States and to avoid confusion, the Department has clarified the term employee

in Section 705.5 to include advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the State Regulatory Authority under the authority of State law or regulations. An exception has been made for members of advisory boards or commissions which are established to represent multi-interests in accordance with requirements of State law or regulations. This exception is necessary to avoid dismembering boards or commissions composed in such a manner as to represent divergent interests.

To provide further guidance as to which members of the State Regulatory Authority are covered employees for the purpose of these regulations, we have added a definition of the term "performing any function or duty under this Act". This term means those functions or duties of an employee which, by their decisions or actions or by their failure to act, affect the programs under the Act. This definition should not be interpreted as excluding all support and clerical personnel. Those who may act with considerable independence or are otherwise in a position to affect the agencies' programs are covered employees under this definition. This approach was adopted in lieu of specifying job titles of employees who are covered or not covered since the actual duties that go with such job titles will vary widely. It will be necessary for State officials to apply the definition of "performing any function or duty under this Act" for groups of employees having common job duties and for other situations on a case-by-case basis in order to identify noncovered employees.

b. Prohibited interests. - Eight commenters stated that the terms "conflict" and "direct or indirect financial interests" were not precise or explicit, and that clarification of these terms was one of the most important issues. Two commenters suggested deletion of the terms "conflict" and "conflict of interest" because these terms do not appear in Section 517(g) of the Act. These and other commenters suggested various situations which should not be considered as prohibited financial interests, as follows:

{56062} (1) Determination of the existence of a direct or indirect financial interest should be linked to a situation where an employee's judgment and decision-making role is affected. The most frequently mentioned issue was to permit interests by covered employees in coal mining operations which did not come under their inspection, decision-making or jurisdiction. For example, four commenters suggested that a covered employee be allowed to retain financial interests in coal mining operations in States other than the one in which he or she is employed. Similarly, one commenter suggested that the employee should be required to certify only to financial interests which create a conflict, rather than to certify to interests held in coal mining operations.

(2) A de minimis provision should be adopted. Specifically, one commenter suggested that interests of less than 10 percent of the outstanding stock of a business entity should be considered insignificant and therefore not reportable.

(3) Retirement benefits, whether or not guaranteed, should not be considered a financial benefit.

In response to these comments, several changes have been made in these final rules in Sections 705.5 and 706.3. The terms "conflict" and "conflict of interest" have been deleted as both confusing and lacking a statutory base. It is, however, recognized that the statutory history reflects an intent to prohibit conflict of interests and this has been taken into consideration in redefining indirect interests as discussed subsequently.

In lieu of "conflict of interest", the term "prohibited financial interest" has been adopted in light of the statutory restrictions on certain interests. The suggestions for excluding certain financial interest and employment situations from direct interest could not be considered because Section 517(g) of the Act specifically prohibits any covered employee from having a direct interest in a coal mining operation. This statutory requirement also extends to indirect interests, but there is more flexibility to distinguish between conflict and non-conflict situations in defining the term "indirect financial interest".

In these final rules, direct financial interest is defined in terms of what constitutes any financial interest in coal mine operations held by a covered employee. No exceptions are recognized in light of the specific prohibitions of the Act.

In these final rules, indirect financial interest is defined as beneficial ownership (i.e. investments not held in the employee's name but from which he or she reaps the benefits). The definition includes financial interests of the employee's spouse, minor children and other relatives residing in his or her home, except where such financial interests are unrelated to the functions or duties of the employee. It is clear that the potential for conflict increases the closer the relationship of such financial interest to the employee's job duties. Over time, it is expected that through the decision-making, appeals and oversight processes, more explicit guidance will be developed by the Director.

One commenter suggested that, to assure impartiality, no covered employees should have been employed or held an elected or appointed office in an organization which has taken a public position on coal surface mining within three years of

his employment by a State Regulatory Authority. This suggestion has not been adopted. No statutory authority exists in Section 517(g) of the Act for this, nor does the legislative history suggest that this would be a reasonable inference of the intent of the Act.

c. Coal mining operations. Two commenters questioned whether companies that manufacture equipment for production or safety in mining operations or produce pollution control equipment are engaged in coal mining operations for the purpose of these rules. The answer is no. The definition of coal mining operation in Sections 705.5 and 706.3 of these rules addresses those companies which are in the business of developing, producing, preparing or loading various types of coal or of reclaiming the areas upon which such activities occur.

The same two commenters questioned whether diversified companies, engaged in coal operations and many other activities, are considered to be engaged in coal mining operations for the purposes of these rules. The answer is yes. There is no reasonable basis for interpreting Sections 201(f) and 517(g) of the Act as allowing consideration of the relative significance of coal mining operations to the total business of a company.

5. Employee reporting requirements. One commenter objected to the reporting requirements of Section 705.17 imposed on employees. It was contended that reporting of other than financial interests in coal mining operations was not warranted by the statute and represents an invasion of privacy. However, the concepts that affected employees would only report financial interests in coal mining operations or simply certify that they had no such interests were discarded as legally insufficient to ensure employee compliance with Section 517(g). Instead, covered employees are being 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 prohibited financial interest exists and what the proper remedial action should be.

To assist in the Head of the State Regulatory Authority and employees, the proposed rules set forth examples of prohibited financial interests. Three commenters suggested adding examples of financial interests which they believed would not be prohibited. Three other commenters suggested that the examples not be identified as prohibited interests, but rather as exceptions to be reported for a determination of whether or not they represented prohibited interests. One of these commenters also observed that the problem with citing such examples is that they limit the opportunity for the Head of the State Regulatory Authority to make judgments based on the full circumstances of a situation.

While there is little true flexibility in judging direct financial interests, judgment will be required for indirect financial interests because these rules provide an exception where the financial interests of the spouse, minor children and resident relatives are unrelated to the employee's functions or duties. Therefore, we have concluded that the inclusion of examples of prohibited interests in these final rules would create an unwarranted inflexibility. In order to provide assistance in addressing these judgmental areas, and to increase uniformity to the extent feasible, it is contemplated that the Director will issue supplementary guidance, including identification of certain common situations which have been identified as either prohibited or non-prohibited interests.

6. Requirements for review of employees' statements. Two commenters suggested deletion of the requirement that the Head of the State Regulatory Authority certify that no prohibited interests exist (Sections 705.4(a)(4) and 706.5(a)(3)). One commenter suggested there was no authority under the Act for this requirement. However, such authority is contained in the provisions of Section 517(g) which states that the Secretary establish methods by which provisions of this subsection of the Act will be monitored and enforced. The other commenter noted that such a certification requirement obligated the Head of the State Regulatory Authority to take responsibility for employee statements which might contain false information. The wording has been changed to make the certifying official responsible only for the information made available for his or her review.

7. Gifts and gratuities. One commenter stated that a common problem affecting State surface mining inspectors has been the traditional practice of coal operators offering gifts or gratuities at holiday time. Gifts from a coal mine operator to a State or Federal employee performing functions or duties under the Act may, if accepted, create an indirect financial interest. Based on the comment received, on the clear legislative requirement under Section 201(c)(2) that the Secretary publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of the Act, and on the fact that Federal employees and most State employees already have policies prohibiting acceptance of gifts, Sections 705.18 and 706.18 were adopted.

Sections 705.18 and 706.18 give consideration to existing State and Federal prohibitions about the acceptance of gifts. The regulations in Section 705.18 do not prohibit all gifts, are addressed to minimum requirements, and call for

administrative remedies to be in accordance with State regulations or policies. The regulations in Section 706.18 for Federal employees are identical and call for administrative remedies to be in accordance with existing Federal regulations.

{56063} The Department believes the regulations added in Sections 705.18 and 705.18 are necessary to satisfy the requirements of Section 201(c)(2) of the Act and to help ensure that State and Federal regulatory officials do not obtain an indirect financial interest in a coal mining operation by receiving a gift from a coal mine operator.

8. Relations with other Federal agencies. One comment, received from another Federal agency dealt exclusively with certain provisions of Part 706 which affect the relationships between other Federal agencies and Interior. It was suggested that the provisions of Section 706.4(c) be amended to clearly delegate to the audit capability of other Federal agencies the responsibility for auditing compliance with the Act and regulations within their agency. This was our intent and the wording of the regulation has been modified as suggested.

9. Adopting additional regulatory provisions. Two commenters suggested that we add subject matter not addressed in the proposed regulations. Both commenters asked the Department to include provisions delineating what private citizens or citizen groups must do to report conflict of interest situations which they are aware of within State Regulatory Authorities. In addition, one of the two commenters suggested that the proposed regulations should address the related financial interest question of whether a State agency should be allowed to rent office space or a building from a coal company.

These suggested additions have not been adopted. The Department feels that citizens and citizen groups should be encouraged to report violations, but does not consider it appropriate to regulate the channels or procedures for such reporting. Concerning such issues as State agency rentals of building space, the Department believes this is beyond the statutory provisions of Section 517(g) and therefore cannot be addressed in these regulations. The primary authors of this document are Allan L. Reynolds, Gene Fredriksen, and Gabe Paone of the Department Counselors staff, in coordination with the Office of Surface Mining Reclamation and Enforcement Task Force and the Solicitor's Office.

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

Dated: October 14, 1977.
LEO M. KRULITZ, Solicitor.

In consideration of the foregoing and pursuant to the authority of Sections 201(c), 201(f) and 517(g) of the Surface Mining Control and Reclamation Act of 1977, Title 30 is amended by adding Chapter VII. Office of Surface Mining Reclamation and Enforcement and by adding Parts 705 and 706 to read as follows:

PART 705 – RESTRICTIONS ON FINANCIAL INTERESTS OF STATE EMPLOYEES

Section	
705.1	Purpose.
705.2	Objectives.
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705.15	Where to file.
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705.18	Gifts and gratuities.
705.19	Resolving prohibited interests.
705.21	Appeals procedures.

AUTHORITY: Surface Mining Control and Reclamation Act of 1977, Pub.L. 95-87, Sections 201(c) and 517(g).

Section 705.1 – Purpose.

This part sets forth the minimum policies and procedures that States must establish and use to implement Section 517(g) of the Act 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 of the Act, 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 705.5.

Section 705.2 – Objectives.

The objectives of this part are:

- (a) To ensure that the States adopt a standard program for implementing the 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 705.3 – Authority.

- (a) The Secretary of the Interior is authorized by Pub.L. 95-87 to:
 - (1) Establish the methods by which he or she and State officials will monitor and enforce the provisions contained in Section 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 in order to identify any financial interest which may be affected by Section 517(g), and
 - (3) Report annually to the Congress the actions taken and not taken during the preceding calendar year under Section 517(g) of the Act.
- (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 705.4 – 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 705.11;
 - (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 prohibited financial 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 prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

(5) Submit to the Director such statistics and information as 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 705.11(b), (c) and (d);

(7) Furnish a blank statement 45 days in advance of the filing date established by Section 705.13(a) 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 implementation of these regulations;

(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;

{56064} (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 prohibited financial interests have been resolved, and that no other prohibited interests have been identified from the statement;

(5) Monitor the 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 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 performing any duties or functions under the Act shall:

(1) Have no direct or indirect financial interest in coal mining operations;

(2) File a fully completed statement of employment and financial interest 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on the specified filing date; 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 705.5 - Definitions.

ACT means the Surface Mining Control and Reclamation Act of 1977, Pub.L. 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.

EMPLOYEE means (i) any person employed by the State Regulatory Authority who performs any function or duty under the Act, and (ii) advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the State Regulatory Authority under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. State officials may through State law or regulations expand this definition to meet their program needs.

PERFORMING ANY FUNCTION OR DUTY UNDER THIS ACT means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

DIRECT FINANCIAL INTEREST 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 operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

INDIRECT FINANCIAL INTEREST 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, minor 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, minor children or other resident relatives hold a financial interest.

PROHIBITED FINANCIAL INTEREST means any direct or indirect financial interest in any coal mining operation.
OFFICE means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

DIRECTOR means the Director or Acting Director of the Office of Surface Mining Reclamation and Enforcement within the U.S. Department of the Interior.

SECRETARY means the Secretary 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 705.6 - 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 Section 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.

(b) Regulatory penalties are imposed by this part. The provisions in Section 517(g) of the Act make compliance with the financial 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 705.11 - Who shall file.

(a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies 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 is no longer employed by the State Regulatory Authority at the time a filing is due, is 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. State Regulatory Authorities may be organized to include more activities than are covered by the Act. For example, if a State has identified its Department of Natural Resources as the State Regulatory Authority there may be only one or two offices within that Department which have employees who perform any functions or duties under the Act. In those cases, the Head of the State Regulatory Authority shall list the title of boards, offices, bureaus or divisions within the State Regulatory Authority which do not perform any functions or duties under the Act and list the positions not performing functions or duties under the Act for only those

boards, offices, bureaus or divisions that do have some employees performing functions or duties under the Act. Only those employees who are employed in a listed organizational unit or 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 Head of each State Regulatory Authority may revise the listing by the addition or deletion of positions at any time he or she determines 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.

(e) The Secretary or the Director may modify the listing at any time one or both of them determines that the listing submitted by the Head of a State Regulatory Authority indicates that coverage is not sufficient to carry out the purpose of the law or the regulations of this part.

Section 705.13 - 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, or at such other date as may be agreed to by the Director, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Congress.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. 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 or her next annual statement until February 1, 1980.

Section 705.15 - Where to file.

(a) The head of the State Regulatory Authority shall file his or her statement with the Director. All other employees, as provided in Section 705.11, 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 705.17 - 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 705-1 as provided by the Office. The statement consists of three major parts, (1) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year, (2) a 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, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(b) Listing of all financial interest. 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 associations, 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 as exceptions by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to (i) 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 (ii) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form 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 financial interests;

(ii) Show the number of shares, estimated value or annual income of the financial interests; and

(iii) Include any other information which the employee believes should be considered in determining

whether or not the interest represents a prohibited interest.

(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 705.6(a).

Section 705.18 - Gifts and gratuities.

(a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a coal company which:

(1) Conducts or is seeking to conduct, operations or activities that are regulated by the State Regulatory Authority;

or

(2) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) The prohibition in paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

(1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and

(2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing or adopted State regulations or policies.

Section 705.19 - Resolving prohibited interests.

(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 financial interest, the Head of the State Regulatory Authority shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action may include:

(i) Reassignment of the employee to a position which performs no function or duty under the Act, or

(ii) Divestiture of the prohibited financial interest, or

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

(3) Reports of noncompliance. 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 of 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 prohibited interest is required within 90 days.

(2) Remedial action should be consistent with the procedures prescribed for other State employees by Section 705.19(a)(2).

(3) Reports of noncompliance.

(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 the action to impose the penalties prescribed by the Act, or to impose the eligibility restrictions prescribed by Section 705.1 should be initiated.

(ii) Within 30 days of receipt of a noncompliance report from the Head of a Regulatory Authority under Section 705.19(a)(3), 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 705.21 - Appeals procedures.

Employees have the right to appeal an order for remedial action under Section 705.19, 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 or her appeal, in writing, with the Director who will refer it to the Conflict of Interest Appeals Board within the U.S. Department of the Interior.

PART 706 – RESTRICTION ON FINANCIAL INTERESTS OF FEDERAL EMPLOYEES

Section

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706.19	Resolving prohibited interests.
706.21	Appeals procedures.

AUTHORITY: Surface Mining Control and Reclamation Act of 1977, Pub.L. 95-87, Section 201(c) and (f).

Section 706.1 - Purpose.

This part sets forth the minimum 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 706.3.

Section 706.2 - Objectives.

The objectives of this part are:

- (a) To ensure that affected Federal agencies adopt a standard program for implementing the 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 706.3 - Definitions.

ACT means the Surface Mining Control and Reclamation Act of 1977, Pub.L. 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.

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

PERFORMING ANY FUNCTION OR DUTY UNDER THIS ACT means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

DIRECT FINANCIAL INTEREST 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 operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

INDIRECT FINANCIAL INTEREST 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, minor 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, minor children or other resident relatives hold a financial interest.

PROHIBITED FINANCIAL INTEREST means any direct or indirect financial interest in any coal mining operation.
OFFICE means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

DIRECTOR means the Director or Acting Director of the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

SECRETARY means the Secretary of the Interior.

OTHER FEDERAL AGENCY means any executive Federal agency or office or part thereof not a part of the U.S. 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.

Section 706.4 - 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 the actions taken and not taken during the preceding calendar year under Section 201(f) of the Act.

(b) Other Federal agencies with employees who perform functions or duties under the Act may adopt financial 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 or her, applying the regulations of the Department of the Interior. Where the Director determines that remedial action is necessary, he or she 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, will conduct periodic audits of Interior's compliance with the provisions contained in Section 201(f) of the Act and the provisions of this part. The Office of Audit and Investigation will arrange for such periodic audits of other Federal agencies to be performed by the audit unit of each such agency. The audits will be conducted on a cyclical basis or upon request of the Secretary of the Interior or the Director. Copies of all audit reports and related responses on corrective actions will be provided to the Director.

Section 706.5 - Responsibility.

(a) The Director, the Head of each other Federal agency, and the Head of each other bureau or office within the U.S. 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 financial 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 interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;
- (3) Certify on each statement that review has been made, that prohibited financial interests if any, have been resolved, and that no other prohibited interests have been identified from the statement;
- (4) Resolve prohibited financial 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; and

(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 706.5(a) the Director shall:

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

(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 taken during the preceding calendar year under Section 201(f);

(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 financial 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 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 706.5(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 financial statements or to enter into a memorandum of understanding with the Director that the U.S. Department of the Interior will provide and review the financial 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 and the U.S. Department of Justice cases of knowing violations of the provisions in section 201(f).

(d) In addition to the common responsibilities in Section 706.5(a), the Heads of other bureaus or offices within the U.S. Department of the Interior 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) Have no direct or indirect financial interests in 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 the specified filing date, 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 706.6 - Penalties.

(a) Criminal penalties are imposed by Section 201(f) of the Surface Mining Control and Reclamation Act of 1977, Pub.L. 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 Section 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 financial interest requirements a condition of employment for all Office employees and for other Federal employees who

perform any functions or duties under the Act. Accordingly, an employee who fails to file the required financial 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.

Section 706.11 - 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 bureaus and offices within the U.S. Department of the Interior 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 and 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 706.13 - When to file.

(a) Employees 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 or at such other date as may be agreed to by the Director, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Congress.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(e) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. 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 or her next annual statement until February 1, 1980.

Section 706.15 -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 his or her appropriate Ethics Counselor as identified in 43 CFR 20.735-22(c).

(c) Each employee of another 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 706.17 - 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 a form provided by the Office or on a similar form adopted by an other Federal agency. The statement shall consist of three major parts, (1) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year, (2) a 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, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(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 statement 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 associations, 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 as exceptions by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to (i) 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 (ii) 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 employee certification of the form must provide enough information for the Director, the Head of an other Federal agency, or the Head of other bureaus or offices within the U.S. Department of the Interior to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(i) List the financial interests;

(ii) Show the number of shares, estimated value or annual income of the financial interests; and

(iii) Include any other information which the employee believes should be considered in determining

whether or not the interest represents a prohibited interest.

(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 706.6(a).

Section 706.18 - Gifts and gratuities.

(a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a coal company which:

(1) Conducts or is seeking to conduct operations or activities that are regulated by the Federal Government; or

(2) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) The prohibitions in paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

(1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance, and

(2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing Federal regulations or policies.

Section 706.19 - Resolving prohibited interests.

Actions to be taken by the Director, the heads of other Federal agencies, and the heads of other affected bureaus and offices within the U.S. Department of the Interior include:

(a) Remedial action to effect resolution. If an employee has a prohibited financial interest, 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 prohibited interest is required within 90 days.

(b) Remedial action may include:

- (1) Reassignment of the employee to a position which performs no function or duty under the Act, or
- (2) Divestiture of the prohibited financial interest, or
- (3) Other appropriate action which either eliminates the prohibited financial interest or eliminates the situation which creates the conflict.

(c) Reports of noncompliance. 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 promptly report the facts of the situation to the Director. 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, including a statement of actions being taken at the time the report is made. Within 30 days of receipt of a noncompliance 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 706.21 - Appeals procedures.

Employees have the right to appeal an order for remedial action under Section 706.19 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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