

spouses and minor children of such employees, are not prohibited by paragraph (c)(1) of this section from acquiring or retaining rights in Federal lands controlled by the Department for the benefit of Indians or Alaska Natives.

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

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

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which was approved in writing under criteria and procedures in effect before November 2, 1996, unless the approval is withdrawn by the Designated Agency Ethics Official, subject to the standards for waivers in paragraph (e) of this section.

**§ 3501.104 Prohibited interests in mining.**

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

having a direct or indirect financial interest in underground or surface coal mining operations.

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

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

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

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

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

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

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

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

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

(iv) A legal or beneficial interest in a qualified profit sharing, retirement, or similar plan, provided that the plan does not invest more than 25 percent of its funds in debt or equity instruments of entities engaged in private mining activities in the United States, and the

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employee neither exercise control nor has the ability to exercise control over the financial interests held in the plan; or

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

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

(B) Inheritance;

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

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

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

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

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

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

with the standards for waivers in paragraph (b)(5) of this section.

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

§ 3501.105 **Outside employment and activities.**

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

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

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

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

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

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

(B) The USGS may issue instructions exempting categories of employment from the prior approval requirement in paragraph (b)(1)(ii)(A) of this section, based on a determination that the employment within those categories