

**OFFICE OF SURFACE MINING**

**GUIDELINES  
FOR  
STATE ETHICS PROGRAM**

May 1984

## GENERAL PROVISIONS

### OBJECTIVES

This manual provides recommended procedures and guidelines to assist in the administration of the State Ethics Program. The procedures and guidelines relate primarily to the prevention, identification and resolution of conflicts of interest. This manual should be used as a supplement to the procedures or guidelines developed by each State under 30 CFR 705.2.

### BACKGROUND

The fundamental requirements in 30CFR 705 regarding conflicts of interest are based on statutory restrictions found in Public Law 95-87. Section 517(g) of the law requires that, the Secretary, Department of the Interior, establish the methods by which the provisions of this subsection will be monitored and enforced, including appropriate provisions for the filing by their financial interests which may be affected by this subsection.

The head of each State Regulatory Authority established under Section 503 of 504 has primary responsibility at the State level for administrating the conflict of interest provisions of this act.

In July of 1978, four decision papers which dealt with implementing the Office of Surface Mining Financial Interests Regulations were issued. Two of these decision papers dealt with the State Financial Interests Program and are included for guidance. (SEC. Illustrations 1-2).

### DEFINITIONS

Coal Mining Operation - Means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the acres upon which such activities occur. (ref: 30 CFR 705.5)

Employee - Means (i) any person employed by the State Regulatory Authority who performs any function of duty under the Act, an (ii) advisory board of 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 expend this definition to meet their program needs. (Ref.: 30CFR 705.5)

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. (ref.: 30 CFR 705.5)

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. (ref: 30 CFR 705.5)

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 inlaws, 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. (ref: 30 CFR 705.5)

Prohibited Financial Interest - Means any direct or indirect Financial interest in any coal mining operation. (ref: 30 CFR 705.5).

## PENALTIES

Criminal penalties are imposed pursuant to Section 517(g) of the Act. Whoever knowingly violates this subsection shall, upon conviction, be punished by a fine of not more than \$2,500, or imprisonment of not more than one year, or both. (ref: 30 CFR 705.6 (a)).

Regulatory penalties are also imposed pursuant to Section 517(g). An employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 517© and will be subject to removal from his or her position. (ref: 30 CFR 705.6 (b)).

## DUTIES OF THE HEAD OF THE STATE REGULATORY AUTHORITY

The Head of the State Regulatory Authority serves as the Ethics Official for the State. He or She may elect to designate other State Officials to assist in the operational aspects of the Program. When the term "Ethics Official" is used in this manual, it means the Ethics Official or his/her designee. The primary duties under this program include the following:

- Identify positions for which the employee shall be required to file statements of employment and financial interests. This includes proposing revisions to the list of positions for which the employee shall be required to file. In addition, the Ethics Official is responsible for preparing an annual list shall be prepared of those organizational units and positions which do

not perform any functions or duties under the Act. This list is to be submitted to the Director, office of Surface Mining, by September 30 of each year. A position breakdown is required only when the organizational unit has some positions identified in which the incumbent would perform functions and duties under the Act. If no revisions are required, the Ethics Official shall submit a certification of no changes. (ref: 30 CFR 705.11 (b) & (d)).

- Counsel employees during the recruitment process so that they understand the conditions of employment prior to being selected. Early counseling will allow the prospective employee to consider any financial interest restrictions before accepting the position. (ref: 30 CFR 705.4 a)).
- Ensure that new employees hired, appointed, or transferred to perform any functions or duties under the Act file a statement at the time of entrance to duty. (ref: 30 CFR 705.13 (b)).
- Notify at least 45 days before the filing date each year, all employees who are required to file annual statements of employment and financial interests and provide them with the necessary forms and instructions for filing complete new statements even if there are no changes. (ref: 30 CFR 705.4(a) (7) & (8)).
- Ensure that all employees required to file statements do so no later than February 1 of each year. (ref: 30 CFR 705.13(2)).
- Ensure that the Head of the State Regulatory Authority files his or her statement with the Director, Office of Surface Mining, no later than February 1 of each year. (ref: 30 CFR 705.15(a)).
- Review the statement of each employee who is required to file to ensure compliance with the regulations. (ref: 30 CFR 705.4 (a)(2)).
- Provide procedural assistance, upon request, to employees who wish to appeal an order for remedial action. (ref: 30 CFR 705.21(a)).
- Maintain copies of laws, rules, and regulations with which employees are expected to be in compliance. Employees should be advised where these laws, rules, and regulations may be reviewed and should be provided an opportunity to make such a review on request. (ref: 30 CFR 705.4 (a)).

### CALENDAR OF ACTION DATES

Identify positions performing any  
functions or duties under the Act

As needed

Identify organizational units/positions not performing any functions or duties under the Act and submit list annually to the Director, Office of Surface Mining by	September 30
Notice to employees of annual filing requirements by	45 days before file date (approx. December 15)
Statements (Form OSM-23) filed by	February 1
Review all statements within	90 days of receipt (suggested Timeframe)
Notice to employees of no conflict or Exceptions being taken	As completed
Report to the Office of Surface Mining On results of filing	Until completed

## REVIEW OF STATEMENTS

### PURPOSE OF REVIEW

The review of statements of employment and financial interests is made to verify that information reported by employees discloses no interests prohibited by law or regulations. The initial review should be made for completeness and to be sure that all statements have been received no later than February 1. The final review is to verify and research the interests disclosed on the statements. If this review discloses that the employee has interests or activities which are prohibited or which raise questions of conflict with his or her duties, appropriate counseling should be initiated as part of the review. Action to resolve any prohibited interests or conflicts of interest must be resolved and remedial action, if necessary, completed within a reasonable time - 90 days or less is suggested unless a longer period is warranted.

The following discussion and sample illustrations have been developed to assist in carrying out the steps of the filing cycle. (SEE Illustrations 4-8).

### RECEIPT OF STATEMENTS

A control list should be established showing the employees who are required to file a statement. Officials must ensure that all employees required to file statements have filed the required statements within the established times.

## THE REVIEW (30 CFR 705.17)

### Financial Interests Review

Determine if the holdings listed are precluded by statutory or regulatory restrictions. When an employee holds an interest in a company that has a subsidiary engaged in a coal mining operation, it is a prohibited interest even though the subsidiary is not a significant portion of the parent company's business. Holdings of any amount are prohibited when statutory restrictions apply.

### Real Property Review

Determine if the ownership, lease, royalty or other interests or rights in lands or minerals are precluded by statutory or regulatory restrictions. Employees are not required to report lands developed and occupied for a personal residence.

### Employment Review

Determine if any continuing financial interests in business entities and nonprofit organization through a pension or retirement plan, shared income, salary or other income arrangements as a result of prior or current employment is precluded by statutory restrictions.

### Creditors Review

Determine if those debts owed to business entities and nonprofit organizations are precluded by statutory or regulatory restrictions. Employees are not required to list current and ordinary household and living expenses.

## RECORD MAINTENANCE

Maintenance of the statement by the State Regulatory Authority is subject to State Law.

## RECORDS ACCESS

Under 30 CFR 705.5 the statement may be inspected by or provided to representatives of the Department of the Interior.

## REFERENCE MATERIALS

Information on corporate activities, legal opinions interpreting the Act, and the coal mining industry can be obtained from the following publications, which can be found at most public libraries:

- Standard and Poar's

- Surface Mining Reporter
- Keystone Coal Mine Manual
- Keystone News Bulletin
- Moody's Public Utilities Manual
- Moody's Industrial Manual
- Moody's Transportation Manual
- Moody's Bank and Finance Manual
- Dun and Bradstreet's Middle Market Directory
- Dun and Bradstreet's Million Dollar Directory

#### USE OF THE OFFICE OF SURFACE MINING

The State Ethics Official may consult with the Office of Surface Mining for clarification on any aspects of the Program. Written inquiries should be addressed to the following office:

Office of Surface Mining  
Division of Personnel, ATTN: ASC  
1951 Constitution Ave., NW, Rm. 5415L  
Washington, D.C. 20240

Telephone inquiries should be made on (202) 343-3326.

#### DOCUMENTING APPROVAL OF STATEMENTS

Approval of statements must be documented on the reviewed statement by the signature of the deciding official along with the date. The Ethics Official should establish a file for each employee to hold all relevant data that has been considered in making the final determination. The Ethics Official must maintain a comprehensive record of the actions taken to resolve conflicts. The record should be sufficient for a knowledgeable third party to understand the decision reached and the basis for the decision. (30 CFR 705.4(a)(4)).

#### RESPONSE TO EMPLOYEE

A written notification should be sent to each employee filing a statement of employment and financial interests showing that a thorough review has been done and that no

conflicts exist. A copy of the notification should be placed in the employee's program file.(SEE Illustration 9).

## RESOLUTION OF CONFLICTS

### INFORMAL COUNSELING

In the event that an employee's statement of employment and financial interests and the supplementary information obtained from the employee reveal a prohibited holding or a conflict of interest, the Ethics Official should discuss the matter with the employee. Most employees will recognize the situation exists and voluntarily agree to take action to remedy the matter. A written record concerning the matter should be made and attached to the employee's statement.

Employees should also be able to consult with the Ethics Official on prospective new financial interests to avoid future problems.

### REMEDIAL ACTION

#### Divestiture

If the prohibition or conflict involves the ownership of stocks, lands, etc., of outside employment or business interests, the Ethics Official may order an employee to remedy the situation within a reasonable period, usually 90 days, showing that the interest has been disposed. All orders for divestiture must be in writing and must indicate that the employee has the right to appeal and the steps to follow in appealing.

#### Reassignment of the Employee

The Ethics Official may reassign the employee to a position which does not perform any functions or duties under the Act.

#### Other

The Ethics Official may take other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict. Any alternative action other than divestiture or reassignment, should be carefully considered before implementation, Other actions are normally only appropriate to resolve indirect financial interests.



## APPEALS PROCESS

### Appeals of Orders for Remedial Action

Employees have the right to appeal an order for remedial action under 705.19 before disciplinary action will be taken and must exercise this right within 30 calendar days of notice.

Employees other than the Head of the State Regulatory Authority may appeal in writing to the Head of the State Regulatory Authority through established procedures within their State. (30 CFR 705.21 (a)).

The Head of the State Regulatory Authority may file his or her appeal in writing with the Director, Office of Surface Mining. (30 CFR 705.21(b)).

### MONITORING SYSTEM

#### Statistical Reports

The Director, Office of Surface Mining, may monitor the Program by using requested reports or information from the State and by periodic audits. (30 CFR 705.3(c) & 705.4(a)(5))  
(SEE Illustration 10)

#### Oversight Role

Under section 517(g) of the Act, the Office of Surface Mining is responsible for oversight. A chart has been developed of the Field Offices in the Office of Surface Mining and the States for which they have responsibility. (SEE Illustration 11). If you have questions on the programmatic aspects of the Program, you should contact the appropriate Field Office.

## ILLUSTRATION I

### ISSUE PAPER #3

#### ISSUE:

Can we apply a materiality criteria to the definition of a prohibited direct or indirect financial interest in any underground or surface coal mining operation?

#### BACKGROUND:

Public Law 95-87 prohibits a direct or indirect financial interest in any underground or surface coal mining operation. Coal mining operation, by regulation, 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.

Other Organic Act prohibitions have, in praction, socco form of materiality criteria. For example, the Geological Survey (EGS) uses 100,000 acres of federally owned land as a cutoff for determining which oil and natural gas companies violate the EGS Organic Act.

#### OPTION:

1. No, we cannot apply a materiality criteria.

##### Pro

- There is no latitude in the law or regulations which allow consideration for materiality.
- When materiality is not a factor a minimum use of judgement is necessary on the part of the reviewer.
- Complete prohibition of even the smallest company will make it easy for employees to recognize a prohibited interest.
- Legislative history indicates that a 100 share deminimis was suggested by Congressman Hechler and vetoed by the committee.

##### Con

- Lack of consideration for materiality of an interest may be unnecessarily severe in that it would prohibit even a one dollar share of stocks in a conglomerate company whose coal mining interests represent 2% of revenues
- Failure to use a materiality factory may not be compatible with the commonly accepted concept of a reasonable person approach.

2. Yes, we can apply a materiality criteria.

Pro

- Compatible with methods currently in use for evaluating financial interests in terms of a conflict of interest situation.
- Will eliminate those extreme cases which involve low insignificant dollar investments in small coal mining operations.
- Will refine our definitions of direct and indirect financial interests in coal mining operations by taking a “reasonable person” approach.

Con

- Redefines the regulatory language which prohibits any direct or indirect financial interest in any underground or surface coal mining operation.
- Will require establishing some fair, easily defined, and easily administered measure for materiality.
- May require additional research for information needed to determine materiality.
- Will operate “borderline” calls and place responsibility on employees to continually monitor their interests to make sure they have not become material interests.

RECOMMENDATION:

Option 1 - we cannot apply a materiality criteria. Our recommendation is based on the fact that the legislative history for the Act makes clear the intention of Congress on this issue. Specifically, one form of materiality (100 shares or less) was considered by the Congressional Committee and disapproved.

Sullivan T. Keenan  
Solicitor Representative - OSM

July 10, 1978  
Date

Robert C. [unclear]  
Solicitor Representative - General  
Law

July 27, 1978  
Date

William [unclear]  
Department Ethics Counselor

7/24/78  
Date

DECISION:

I concur in the recommendation 2/27 H  
I do not concur in the recommendation \_\_\_\_\_  
Reason for nonconcurrence:

Walter [unclear]  
Director, Office of Surface Mining

August 28, 1978  
Date

## ILLUSTRATION 2

### ISSUE PAPER #4

#### ISSUE:

For State employees, are financial interests in out-of-state coal mining operations prohibited?

#### BACKGROUND:

This question has been received from numerous state representatives.

#### OPTIONS:

1. Allow State employees to hold financial interests in out-of-State coal mining operations but not in-state coal mining operations

#### Pro

- This option is reasonable since state employee's can by their action or inaction only influence coal mining operations located within their particular state.
- This option, for any particular state, would ease administration of the prohibition since each state probably has a list of current mining operations conducting business within state boundaries.

#### Con

- The provisions in the Act do not make allowances for the prohibition on the basis of the coal mining operation's location.
- The regulatory definition of prohibited financial interest will have to be revised or modified.
- The State representative will have to monitor new operations moving to the state to determine if a company which is currently acceptable is now prohibited.

2. Prohibit State employees from holding financial interests in coal mining operations regardless of the operation's location.

Pro

- This option would be consistent with regulatory provisions and with a strict interpretation of the language in the Act.
- This option would eliminate the need to constantly check the filings each time a new operator moved into the State.

Con

- This option could be beyond the intent of the conflict of interest provisions in the Act.
- This option would create a great deal of controversy from and lower morale among state employees.

3. Tell the State Representatives that they can deal with the issue as they wish.

Pro

- This option would remove the stigma of the Federal Government telling the States what to do.
- This option would place responsibility to decide the issue properly onto State officials.

Con

- This option most probably would result in inconsistency of application.
- This option may result in the State making a decision which is favorable to financial interests held by top officials within the state regulatory authority.

4. Ask State Representatives to develop a plan and submit it to the Director OSM for approval.

Pro

- Same as option 3 pros.
- Would allow the Director to have some control over consistency of application.

Con

- Will add to OSM workload in the area of conflict of interest.
- Such a "yes" or "no" issue may not warrant an elaborate approval procedure.

RECOMMENDATION:

Option 2 - prohibit state employees from holding financial interests in coal mining operations regardless of the operation's location. It is our determination that the language in the Act is clear on this issue. Any financial interest regardless of location, in a coal mining operation by a person who performs under the Surface Mining Act is prohibited. Further, we have determined that Option 2 is not beyond the intent of the Congress.

Sullivan T. Keenan  
Solicitor Representative - OSM

July 10, 1978  
Date

William C. [unclear]  
Solicitor Representative - General

July 11, 1978  
Date

Will [unclear]  
Asst. Department Ethics Counselor

7/24/76  
Date

DECISION:

I concur in the recommendation ~~with~~ \_\_\_\_\_  
I do not concur in the recommendation \_\_\_\_\_  
Reason for nonconcurrence:

*Walter D. Williams*  
Director, Office of Surface Mining

*August 28, 1978*  
Date



## ILLUSTRATION 5

Memorandum

To: (Name of employee)

From: (Name of Ethics Official)

Subject: Annual Filing of the Statement of Employment and Financial Interests  
(Form OSM-23)

The regulations concerning the restrictions on financial interests of State employees are published in 30 CFR 705. Your position has been identified as one covered by those regulations, and you are therefore required to submit a Form OSM-23, Statement of Employment and Financial interests to me no later than February 1. When appropriate, the information contained on the Statement may be inspected by or provided to representatives of the Department of Interior.

Failure to provide this statement may be considered a breach of your employment responsibilities and obligations and subject you to appropriate action under 30CFR 705.6

Two copies of Form OSM-23 are attached so that you may retain one copy for reference when filing later statements.

If you have any questions or desire further clarification in this matter, please do not hesitate to contact me.

Attachment.

## ILLUSTRATION 6

Memorandum

To: (Name of employee)

From: (Name of Ethics Official)

Subject: Follow-up Request on Annual Filing of the Financial Interests Statement

On (date of first memo) you were requested to file a Statement of Employment and Financial Interests (Form OSM-23) by February 1 to comply with regulation 30 CFR 705. To date your statement has not been received. Please submit this statement immediately. When appropriate, the information contained on the statement may be inspected by or provided to representatives of the Department of the Interior.

Two copies of Form OSM-23 are attached so that you may retain one copy for reference when filing later statements. Your prompt compliance with this reminder is requested.

Failure to provide this statement will be considered a breach of your employment responsibilities and obligations and subject you to appropriate action under 30 CFR 705.6.

If you have any questions or desire further clarification in this matter, please do not hesitate to contact me.

Attachment

## ILLUSTRATION 7

Memorandum

To: (Name of employee)

From: (Name of Ethics Official)

Subject: Additional Information Requested on Annual Filing of the Financial Interests Statement

Under the authority of 30 CFR 705, your financial interests statement is being examined to determine whether a conflict of interest is created by any of your holdings.

During this review process, we wish to provide you with the opportunity to offer additional information and explanation prior to the final determination. This additional information will be used to assist in the final review. When appropriate, the information contained on the statement may be inspected by or provided to representatives of the Department of the Interior.

In order to complete the review process, please provide information as to (explain request).

The regulations require that a decision be made as soon as possible. Your prompt response will be appreciated. I am available if you wish to discuss this with me personally. However, your response should be in writing for the record.

ILLUSTRATION 8

Memorandum

To: (Name of employee)

From: (Name of Ethics Official)

Subject: Divestiture Order

A review has been made of the information supplied on your statement and from other information supplied by you (if applicable).

It has been determined that a prohibited interest or a conflict of interest exists on the following and you are ordered to divest this interest by (should be no longer than 90 days from the date of memo).

(Employment or financial  
Interest)

(Reason for ordering  
divestiture)

You have a right to appeal this divestiture order and have 30 calendar days to exercise this right. Your appeal must be made in writing and addressed to:

(list information)

If you have any questions or desire further clarification, please do not hesitate to contact me.

## ILLUSTRATION 9

Memorandum

To: (Name of employee)

From: (Name of Ethics Official)

Subject: Certification of Annual Filing of the Financial Disclosure Statement

This is to certify that you have filed with me a Statement of Employment and Financial Interest (Form OSM-23). It has been determined that all requirements have been met and that no prohibited interest or conflict of interest exists.

ILLUSTRATION 10

(Name of Director)  
Office of Surface Mining  
Attention: AEC  
1951 Constitution Ave., NW.  
Washington, D.C. 20240

Dear

I certify that the review is completed or that action is in the process to correct any conflicts, as cited below, and that the records of all employees found not to be in conflict have been approved and the employees notified.

Form OSM-23

No. of positions required to file statements.  
(This number will be the same on all  
subsequent reports).

\_\_\_\_\_

No. of statements filed as of this report.

\_\_\_\_\_

Difference between the above lines:

Vacant positions

\_\_\_\_\_

Statement not received

\_\_\_\_\_

Other (explain)

\_\_\_\_\_

---

No. of statements approved, no conflict.

\_\_\_\_\_

No. of statements that require further action.

\_\_\_\_\_

Status of further action taken:

Requested additional information from  
Employee

\_\_\_\_\_

Pending review and decision

\_\_\_\_\_

Pending opinion from State Legal Counsel

\_\_\_\_\_

Pending advice from the Office of  
Surface Mining

\_\_\_\_\_

Decision made, employee notified,  
awaiting response

\_\_\_\_\_

Decision made, employee notified,  
and remedial action agreed to within  
reasonable period

\_\_\_\_\_

Divestitures ordered

\_\_\_\_\_

Other: (explain briefly)

\_\_\_\_\_

Sincerely,

(State Ethics Official)

FIELD OFFICES AND STATES FOR WHICH THEY ARE RESPONSIBLE:

<u>Alabama</u>	<u>Illinois</u>	<u>Indiana</u>	<u>Kentucky</u>	<u>Missouri</u>	<u>New Mexico</u>
Alabama Georgia Mississippi	Illinois	Indiana	Kentucky	Iowa Kansas Missouri Nebraska	Arizona California Colorado Indian Tribes Nevada New Mexico Utah
(205) 7---0513	(217) 492-4495	(317) 269-2610	(606) 233-7327	(816) 372-5527	(505) 766-1493

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<u>Ohio</u>	<u>Oklahoma</u>	<u>Pennsylvania</u>	<u>Tennessee</u>	<u>Virginia</u>	<u>West Virginia</u>
Ohio Michigan	Arkansas Indian Tribes Louisiana Oklahoma Texas	Massachusetts Pennsylvania Rhode Island	Tennessee	North Carolina Virginia	Maryland West Virginia
(614) 886-0518	(918) 561-7927	(717) 782-4036	(615) 623-4504	(705) 523-4301	(304) 347-7187

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Wyoming

Alaska  
Idaho  
Indian Tribes  
Montana  
North Dakota  
Oregon  
South Dakota  
Washington  
Wyoming  
(307) 261-5774

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