

Office of the Secretary of the Interior

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the Secretary is authorized, in his discretion, to accept donations of patented lands, rights-of-way over patented lands or other lands, buildings, or other property within the various national parks and national monuments for the purposes of the National Park System. Persons desiring to offer lands, rights-of-way, or buildings under the provisions of the Act of June 5, 1920, should make inquiry of the superintendent of the national park or monument within which the property is located.

§ 19.8 Prospecting, mineral locations, mineral patents, and mineral leasing within National Forest Wilderness.

Regulations issued under the provisions of the Wilderness Act pertaining to prospecting, mineral locations, mineral patents, and mineral leasing within National Forest Wilderness are contained in parts 3327 and 3638 of subchapter C of chapter II of this title.

EDITORIAL NOTE: See Redesignation Table No. 2 of 43 CFR which appears in Volume II of the List of CFR Sections Affected, 1964-1972 for the appropriate sections to former parts 3327 and 3638.

Subpart B—[Reserved]

PART 20—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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AUTHORITY: 5 U.S.C. 301; sec. 12, Ch. 576, 48 Stat. 986 (25 U.S.C. 472); sec. 201(f), Public Law 95-87, 91 Stat. 450-51 (30 U.S.C. 1211 (Supp. V 1981)); E.O. 11222; E.O. 12674 (as modified by E.O. 12731); Public Law 101-194; 5 CFR 2634; 5 CFR part 2635.

SOURCE: 46 FR 58425, Dec. 1, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 20.735-1 Definitions.

(a) *General*. The following terms are used throughout this part and have the following meanings:

(1) *Department* means the U.S. Department of the Interior and any of its components.

(2) *Secretary* means the Secretary of the Interior.

(3) *Bureau* means each major program operating organization of the Department, the Office of the Secretary, and each other Departmental Office.

(4) *Employee* means a regular employee, a special government employee, and a contract education employee in Indian Affairs as defined in 25 CFR 31(g)(2) (h) and (i) unless the text of a particular subpart, section, or paragraph indicates that either regular employees or special government employees are not intended to be covered by that subpart, section or paragraph. Volunteers in Parks accepted pursuant to 16 U.S.C. 18(g) are not employees.

(5) *Regular employee* means any officer or employee of the Department who is appointed or employed to serve more than 130 days in any period of 365 consecutive days.

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(6) *Special government employee* means any employee or officer of the Department who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive calendar days, either on a full-time, part-time or intermittent basis (18 U.S.C. 202). U.S. Mineral Surveyors are considered to be special government employees.

(7) *U.S. Mineral Surveyor* means a person appointed under the authority of 30 U.S.C. 39, and as such is included within the term "officers, clerks, and employees" of the Bureau of Land Management as that term is used in 43 U.S.C. 11 and construed in *Waskey v. Hammer*, 223 U.S. 85 (1912).

(8) *Executive Order* means Executive Order 11222 which was superseded by Executive Order 12674 on April 12, 1989 and subsequently modified by Executive Order 12731 on October 17, 1990.

(9) *Designated Agency Ethics Official* means the Principal Deputy Assistant Secretary—Policy, Management and Budget. In accordance with the rules in 5 CFR 2638.702, the Deputy Agency Ethics Official shall serve as alternate agency ethics official.

(10) *Ethics Counselor* means the head of each bureau, as that term is defined in paragraph (a)(3) of this section, except that the Deputy Assistant Secretary—Policy, Management and Budget is the Ethics Counselor for employees in the Office of the Secretary and other offices for which personnel services are provided by the Division of Personnel Services.

(11) *Deputy Ethics Counselor* means the bureau personnel officer or other qualified headquarters employee who has been delegated responsibility for the operational duties of the Ethics Counselor for the bureau. The Director, Division of Personnel Services is the Deputy Ethics Counselor for employees in the Office of the Secretary and other offices for which personnel services are provided by that Office.

(12) *Assistant Ethics Counselor* or *Associate Ethics Counselor* means a bureau, regional or area personnel officer or other qualified employee who has been delegated responsibility to perform the operational duties of the Ethics Coun-

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selor at the field level. Assistant Ethics Counselors or Associate Ethics Counselors may also be designated within the bureau headquarters.

(13) *Indian Affairs* means the Office of the Assistant Secretary—Indian Affairs and the Bureau of Indian Affairs.

(14) *Dependent child* means a son, daughter, stepson, or stepdaughter who (i) is unmarried and under age 21 and is living in the household of the employee or (ii) is a dependent of the employee within the meaning of section 152 of Internal Revenue Code of 1954 (26 U.S.C. 152).

(15) *Personal residence* means any real property used exclusively as a private dwelling by the reporting individual or his or her spouse, which is not rented for any period during a calendar year. There may be more than one personal residence, and the term may include a vacation home. The term is not limited to domicile.

(16) *Office of Personnel* means the Departmental Office of Personnel within the Department of the Interior, as distinguished from the Office of Personnel Management (formerly called the Civil Service Commission) and from personnel offices in each bureau within the Department of the Interior.

(b) *Specific definitions.* Additional definitions of terms specifically associated with a particular subpart or section are found in that subpart or section.

[46 FR 58425, Dec. 1, 1981; 47 FR 2995, Jan. 21, 1982, as amended at 47 FR 42359, Sept. 27, 1982; 49 FR 6374, Feb. 21, 1984; 58 FR 32447, June 10, 1993]

§ 20.735-2 Purpose, policy, and general responsibilities.

(a) *Purpose.* These regulations set forth Departmental policies and identify principal statutes and regulations which relate to employee conduct and responsibilities. These regulations ordinarily apply to all regular and special employees of the Department. Exceptions to this general rule are stated in the specific subpart, section or paragraph to which they apply.

(b) *General policy.* Employees of the Department are expected to maintain especially high standards of honesty, integrity, impartiality, and conduct to

ensure the proper performance of Government business and the continual trust and confidence of citizens in their Government. Employees are expected to comply with all Federal statutes, Executive Orders, Office of Personnel Management regulations and Departmental regulations. The conduct of employees should reflect the qualities of courtesy, consideration, loyalty to the United States, a deep sense of responsibility for the public trust, promptness in dealing with and serving the public, and a standard of personal behavior which will be a credit to the individual. These principles apply to official conduct and to private conduct which affects in any way the ability of the employee or the Department to effectively accomplish the work of the Department.

(c) *Equal employment opportunity policy.* It is the policy of the Federal Government that there shall be no discrimination in employment based on such factors as race, creed or religion, color, national origin, political affiliation, physical handicap, sex, age, union membership or non-membership, and similar matters not related to merit and fitness. This policy does not affect in any way the provisions of 25 U.S.C. 472 dealing with Indian preference in employment.

(d) *Conformance with policy and subordination to authority.* Employees are required to carry out the announced policies and programs of the Department and to obey proper requests and directions of supervisors. While policies related to one's work are under consideration employees may, and are expected to, express their professional opinions and points of view. Once a decision has been rendered by those in authority, each employee is expected to comply with the decision and work to ensure the success of programs or issues affected by the decision. An employee is subject to appropriate disciplinary action, including removal from office, if he or she fails to: (1) Comply with any lawful regulations, orders, or policies, or

(2) Obey the proper requests of supervisors having responsibility for his or her performance.

(e) *Applicability to Indian Affairs employees.* The provisions of this part

apply to non-Indian employees in Indian Affairs in the same manner as they apply to all other employees employed elsewhere in the Department. Except where otherwise indicated, the provisions of this part shall also apply to Indian and Alaska Native employees in Indian Affairs.

(f) *Bureau responsibilities.* Ethics Counselors shall: (1) Establish and maintain internal procedures and guidelines to adequately and systematically inform employees of the content, meaning, and importance of the regulations in this part. Such supplementary guidelines may include specific or additional restrictions applicable to employees of the bureau. Supplementary guidelines must be approved by the Designated Agency Ethics Official before they are issued.

(2) Give a copy of the regulations in this part to each employee upon entrance to duty. At least once annually, each Ethics Counselor shall:

(i) Remind each employee of the regulations in this part; and

(ii) Inform each employee of the name, location and telephone number of bureau officials who can properly counsel them on ethics and conduct matters.

This annual reminder shall be accomplished through a publication or memorandum issued to all employees. In addition, vacancy announcements for those positions which require any statement of employment and financial interest shall alert applicants to the filling requirement.

(3) Notify the Designated Agency Ethics Official of the names and locations of each Deputy and Assistant Ethics Counselor and of changes in such designations.

(g) *Employee responsibilities.* It is the responsibility of employees (1) to be familiar with and to comply with the regulations in this part. Employees are expected to consult with their supervisors and personnel officers on general questions they may have regarding the applicability of the regulations. On specific matters and for guidance on questions of conflict of interest, employees may obtain advice and guidance from their Ethics Counselors, Deputy Ethics Counselors, Assistant Ethics Counselors, the Department

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Ethics Official, or the Office of the Solicitor, (2) to be careful in dealing with the public and with representatives of private industry so as not to give an opinion or decision contrary to expressed Departmental or bureau policy, (3) to avoid expressing personal opinions or making unauthorized decisions about work situations where those opinions or decisions may be mistakenly taken to be the opinion or decision of the bureau or Department. A memorandum of discussion should be prepared by employees providing ethics advice to representatives of private industry, (4) to report directly or through appropriate channels to the Office of Inspector General matters coming to their attention which do or may involve violations of law or rule by employees, contractors, sub-contractors, grantees, subgrantees, lessees, licensees or other persons having official business with the Department.

(h) *Conduct codes for specific groups.* (1) Special codes of conduct not in derogation of this part may be developed or adopted (if established by the profession in which the employee is engaged, such as attorneys and accountants) by a bureau or the Department for specific groups of employees engaged in the same occupation or profession.

(2) Certain individuals, for example, volunteers in National Park Service programs and enrollees and corps members in youth and young adult programs administered by the Office of Youth Programs, are Federal employees only as specifically provided in the statute which authorizes their particular program. In the absence of a statutory provision which makes the individual in one of these programs a regular or special Government employee, the individual is not subject to the regulations in this part. However, the head of a bureau responsible for individuals in such a program may submit a proposal requesting that all or part of the regulations in this part be made applicable to the particular category.

(3) Proposals for special codes of conduct, including procedures for their implementation, and proposals for applying a portion of these regulations to specific categories of individuals shall be submitted to the Designated Agency

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Ethics Official for approval. The Office of Personnel and the Office of the Solicitor shall also approve such proposals before they are adopted.

(4)(i) Special codes of conduct have been approved in accordance with §20.735-2(h) for two groups of employees:

(A) Bureau of Land Management Fire Management Teams—approved January 16, 1981.

(B) Office of Inspector General Auditors and Investigators—approved July 16, 1982.

(ii) Special codes are effective when signed by the Designated Agency Ethics Official and a representative of the Office of Personnel and the Office of the Solicitor. The listing of codes adopted will be revised when revisions are made to 43 CFR part 20. Copies of these codes may be obtained from the Department's Designated Agency Ethics Official or the Bureau Ethics Counselor for the bureau involved.

[46 FR 58425, Dec. 1, 1981, as amended at 47 FR 42360, Sept. 27, 1982; 49 FR 6375, Feb. 21, 1984]

§20.735-3 Responsibilities of ethics officials and channels for counseling.

(a) *Responsibilities of ethics officials.* (1) The Designated Agency Ethics Official (or the Deputy Agency Ethics Official in his or her absence) shall:

(i) Administer the regulations governing the conduct and responsibilities of employees in the Department;

(ii) Develop and administer an effective system and procedures for the collection, filing, review, and public inspection of financial disclosure statements in accordance with applicable statutes and regulations;

(iii) Provide advice, assistance, training, and guidance to all levels of Ethics Counselors and to any employee within the Department;

(iv) Monitor the conflict of interest program using reports requested of bureaus and periodic internal audits and administrative reviews performed by the Office of Inspector General, the Designated Agency Ethics Official, or others.

(v) Review statements of employment and financial interests for those Department employees cited in §20.735-31(b);

(vi) Ensure that all financial disclosure statements filed by employees with bureaus are completely and effectively maintained and consistently reviewed for conformance to all applicable laws and statutes;

(vii) Assume the authorities and responsibilities of any Ethics Counselor within the Department, either for the duration of an individual case or for a period or periods not to exceed six months each;

(viii) Develop and supervise an education and counseling program for employees on all ethics and standards of conduct matters; the program shall include counseling on post employment matters and shall provide that adequate and specific records are kept on any advice rendered;

(ix) Evaluate periodically, in conjunction with the Office of Government Ethics, the Department's standards of conduct regulations, financial disclosure systems and post-employment enforcement systems to determine their adequacy and effectiveness in relation to current Departmental responsibilities;

(x) Act as liaison with and, as necessary or required, provide information to the Office of Government Ethics concerning the Department's ethics function.

(xi) Develop, maintain and publish a list of those circumstances or situations which have resulted or may result in noncompliance with ethics laws and regulations;

(xii) Keep appropriate records on advice rendered;

(xiii) Take prompt and effective action to insure that appropriate remedial actions are taken.

(2) Ethics Counselors are responsible for administering the regulations governing the conduct and responsibilities of employees in their respective bureaus. Ethics Counselors shall:

(i) Order remedial action in accordance with the provisions of § 20.735-40. This authority may not be redelegated;

(ii) Designate the Bureau Personnel Officer (or other qualified headquarters employee) as Deputy Ethics Counselor. Deputy Ethics Counselors may carry out operational duties of the Ethics Counselor within their bureaus under the general direction of the Ethics

Counselor, including reviewing statements of employment and financial interests, informally resolving conflict of interest situations, and answering employee conduct questions;

(iii) Consolidate the final review, certification and filing of financial interest statements at the headquarters level; and,

(iv) Designate regional or area personnel officers (or other qualified employees) as Assistant Ethics Counselors to perform ethics counseling and the initial financial statement review at the field office level. Assistant Ethics Counselors may also be designated within the bureau headquarters.

(b) *Channels for counseling.* Employees may seek advice from any bureau ethics counselor, the Designated Agency Ethics Official or the Office of the Solicitor. It is the Department's policy to encourage responsible disposition of counseling requests and to strive for consistency in the application of employee responsibility and conduct regulations. To achieve this:

(1) Ethics Counselors shall, if possible, consolidate the operation of the ethics counseling function at the headquarters level. Employee inquiries should be directed to that office. In bureaus where consolidation is not feasible, Assistant Ethics Counselors shall seek concurrence in their final decisions from the bureau Deputy Ethics Counselor or Ethics Counselor. Ethics Counselors may seek advice from the Designated Agency Ethics Official, Regional Solicitors, the Associate Solicitor for General Law or other Solicitor Office officials designated by the Solicitor.

(2) The Designated Agency Ethics Official shall provide advice on any ethics matter to employees and to Ethics Counselors and shall seek advice from the Associate Solicitor—General Law.

(3) Employees wishing to request advice from the Solicitor's Office shall submit requests to Regional Solicitors or to the Associate Solicitor—General Law, in Washington, DC, as appropriate. Regional Solicitors called upon to render advice which will affect interpretations of the employee responsibility and conduct regulations shall

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seek concurrence in their final decisions from the Associate Solicitor—General Law.

[46 FR 58425, Dec. 1, 1981, as amended at 49 FR 6375, Feb. 21, 1984]

§ 20.735-4 Sanctions.

(a) Violations of the regulations in this part by an employee may be cause for appropriate corrective, disciplinary or remedial action, which may be in addition to any criminal or civil penalty provided by law.

(b)(1) Disciplinary action may include oral or written warning or admonishment, reprimand, suspension, reduction in grade or pay, removal from position or removal from office. Such action shall be taken in accordance with Departmental policies and procedures, applicable statutes, Executive Orders, regulations, and any applicable collective bargaining agreement provisions. Disciplinary action for violation of conflict of interest laws or of the regulations in this part, may be imposed independently from and without prior application of remedial actions including those remedial actions cited in § 20.735-40.

(2) Remedial actions required may include those actions described in § 20.735-40. Failure to comply with appropriate remedial action may result in suspension or removal from office, or other disciplinary action. Employees may appeal divestiture orders in accordance with procedures contained in § 20.735-43.

(c) The procedures for disciplinary action involving contract education employees in Indian Affairs are contained in 25 CFR 38.6.

[49 FR 6375, Feb. 21, 1984]

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 20.735-6 Gifts and decorations from foreign governments.

(a) This section implements the Foreign Gifts and Decorations Act (5 U.S.C. 7342).

(b) *Definitions.* (1) *Employee* means all regular and special government employees of the Department, experts and consultants of the Department ap-

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pointed under 5 U.S.C. 3109, spouses of all such individuals (unless such individual and his or her spouse are separated) and dependents (within the meaning of section 152 of the Internal Revenue Code, 26 U.S.C. 152) of such an individual.

(2) *Foreign government* means any unit of foreign governmental authority, including any foreign national, State, local and municipal government; any international or multinational organization whose membership is composed of any unit of foreign government; and any agent or representative of any such unit or organization while acting in that capacity.

(3) *Gift* means a tangible or intangible present, other than a decoration, tendered by, or received from, a foreign government. Examples of intangible gifts are travel and subsistence expenses.

(4) *Decoration* means an order, device, medal, badge, insignia, emblem or award tendered by, or received from, a foreign government.

(5) *Minimal Value* means a retail value in the United States at the time of acceptance of \$140.00 or less. Refer to Federal Property Management Regulations Amendment H-130 dated September 29, 1981.

(c) *Prohibited activities.* An employee is prohibited from: (1) Requesting or otherwise encouraging the tender of a gift or decoration from a foreign government; or

(2) Accepting a gift or decoration from a foreign government, except in accordance with the rules and procedures of the Department. These prohibitions apply whether an employee is on or off duty.

(d) *Exceptions.* An employee may: (1) Accept and retain a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

(2) Accept a gift of more than minimal value when such a gift is in the nature of an educational scholarship or medical treatment, or when it appears to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, provided that: (i) When a tangible gift of more than minimal value is accepted, it will be

deemed to have been accepted on behalf of the United States, shall become the property of the United States upon acceptance, and shall be deposited by the employee with the Department within 60 days of acceptance; and

(ii) An employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and determined by the Assistant Secretary—Policy, Management and Budget to be in the best interests of the Department. In such cases, an appropriate adjustment must be made to the travel voucher claim covering per diem, lodging, etc.;

(3) Accept, retain, and wear a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Department, *Provided, That:* (i) Without such approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States upon acceptance, and shall be deposited by the employee with the Department within 60 days of acceptance; and

(ii) Requests for approval should be sent to the Assistant Secretary—Policy, Management and Budget.

[46 FR 58425, Dec. 1, 1981; 47 FR 2995, Jan. 21, 1982. Redesignated and amended at 58 FR 32447, June 10, 1993]

§ 20.735-7 Reimbursement of travel and related expenses.

(a) *Policy.* (1) Except as specifically authorized by law, when an employee is on official duty (no leave status) all travel and accommodations shall be at Government expense and his or her acceptance of outside reimbursement for travel expenses or services in kind from private sources, either in his or her behalf or in behalf of the government, is not allowed (18 U.S.C. 209). This includes instances where an employee is officially directed to participate in a convention, seminar, or similar meeting sponsored by a private source for the mutual interest of the Government and the private source. In

such instances, expenses shall be charged to the appropriate bureau or Department appropriation.

(2) The Department may charge a fee or accept reimbursement for providing a service or thing of value to a private source when the service or thing of value provided benefits to both the Government and the particular private source (31 U.S.C 9701). In such instances only a portion of the costs can be accepted from the private source. The Department must pay expenses associated with its usual official business and for the benefits it receives from participating in the event. The private source can be charged or may reimburse the Department for that portion of the service provided that exceeds the Department's usual expenses and the benefits to the government. Under this provision, payments from private sources must be deposited in the U.S. Treasury unless the bureau receiving the payment is authorized by statute to accept such payments.

(3) When a bureau is authorized by statute to accept gifts, the travel expenses incurred by an employee directed to participate in a convention, seminar, or similar meeting sponsored by a private source for the mutual interest of the Government and the private source may be reimbursed to the bureau and credited to its appropriation. The employee shall be paid by the bureau in accordance with the law relating to reimbursement for official travel and any accommodations and goods or services in kind furnished an employee shall be treated as a donation to the bureau and an appropriate reduction shall be made to the employee's reimbursement (46 CG 689 (1967)).

(4) When participation at a function is not in an official capacity, an employee may accept reimbursement of travel and accommodation expenses from a private source, provided that such acceptance creates no conflict or appearance of a conflict of interest with one's official duties. Participation as a private citizen must occur on one's own time, such as while on leave. If participation should occur during the course of official travel (i.e., evening or weekend hours during official travel status), the travel voucher submitted

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for Government reimbursement of official duty expenses must be adjusted to claim only that per diem and travel attributable to official duty. Employees who are appointed by the President and paid at a rate higher than the highest rate for GS-18 are on 24 hour duty and determinations of what constitutes official duty and what is private participation should be carefully made.

EXAMPLE: An employee who is a member of a professional society is asked to speak at a society meeting. The society offers the employee air fare to and from the meeting and meals, but hotel accommodations are not offered. In order for the employee to attend while on official duty (no leave status) a decision must be made by his or her supervisor that attendance will result in sufficient benefits to the Government. If it is decided that there will be benefit to the Government all expenses: Air fare, meals, and hotel, must be paid to the employee by the Government. In this situation, if the employee's bureau is authorized by statute to accept gifts then (1) the air fare offered by the Society can be paid to the bureau, (2) the employee may accept the meals and the employee expenses for air fare and per diem shall be paid by the bureau with an appropriate reduction for the meals. If the supervisor decides that attendance at the meeting will not benefit the Government the employee may participate in the meeting and accept the air fare and meals offered by the Society in a non-official capacity, while on leave, provided that such participation creates no conflict or appearance of conflict with his or her official duties. Hotel and other related costs will be at the employee's personal expense.

(b) *Exclusions.* (1) When on official duty, contributions and awards incident to training in non-Government facilities, and payment of travel, subsistence, and other expenses incident to attendance at meetings may be accepted by an employee when the payment is made by a nonprofit, tax exempt organization as described in 26 U.S.C. 501(c)(3) and when no real or apparent conflict of interest will result. Prior advice should be obtained from the employee's ethics counselor in this circumstance (5 U.S.C. 4111).

(2) Employees may accept reimbursement by the Department for travel and related expenses when assigned (official personnel action detail) to State and local governments and to universities in accordance with 5 U.S.C. 3375.

(3) Should the Director of the United States Information Agency, with the

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approval of the employing agency, assign a Departmental employee to a foreign government, reimbursement for the employee's pay and allowances shall be made to the United States in an amount equal to the compensation, travel expenses, and allowances payable to such person during the period of such assignment, in accordance with 22 U.S.C. 1451.

(4) Should an employee be detailed by the Secretary to an international organization which requests services, the employee is deemed to be (for the purpose of preserving his or her allowances, privileges, rights, seniority, and other benefits) an employee of the Department and the employee is entitled to pay, allowances, and benefits from funds available to the Department. The international organization may reimburse the Department for all or part of the pay, travel expenses, and allowances payable during the detail; or, the detailed employee may be paid or reimbursed directly by the international organization for allowances or expenses incurred in the performance of duties required by the detail without regard to 18 U.S.C. 209 (5 U.S.C. 3343).

[46 FR 58425, Dec. 1, 1981; 47 FR 2995, Jan. 21, 1982; 47 FR 42360, Sept. 27, 1982, as amended at 49 FR 6375, Feb. 21, 1984. Redesignated at 58 FR 32447, June 10, 1993]

§ 20.735-8 Nepotism.

(a) *Definition.* "Relative" means an individual who is related to the employee as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) *Policy.* An employee may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the Department or over which he or she exercises jurisdiction or control, any individual who is a relative of the employee. An individual may not be appointed, employed, promoted, or advanced in or to a position in the Department if such appointment, employment, promotion, or advancement has been advocated by an

employee, who is a relative of the individual and who is serving in or exercising jurisdiction, or control over the position. (5 U.S.C. 3110)

(c) *Exceptions.* (1) An employee may employ or appoint relatives to meet emergency needs without regard to the restrictions in 5 U.S.C. 3110 and this part. Appointments under these conditions are temporary not to exceed 1 month, but may be extended for a second month if the emergency needs still exist (refer to 5 CFR 310.202). Emergency needs means a national emergency as defined in the Federal Personnel Manual and includes emergencies posing immediate threat to life or property. Exceptions may also be made in situations involving special scientific needs, isolated field stations or locations where there is a shortage of quarters. In regard to summer employees, refer to current Department directives.

(2) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under 5 U.S.C. 3317(a) will result in the selection for appointment of an individual who is not a preference eligible.

(3) An employee may supervise a relative when: A bureau director or the Assistant Secretary—Policy, Management and Budget for Office of the Secretary and other Departmental office employees, (i) finds that all merit-related provisions of Federal law have been observed, (ii) determines that such supervision would result in a net benefit to the Government, and (iii) assigns a non-related individual as manager to conduct performance evaluations and recommend promotions or advancements.

Supervision under this exception is limited to activities other than appointing, employing, promoting, advancing or advocating the appointment, employment, promotion or advancement of a relative. Effectively then, this exception allows an employee to work with his or her relative on the same project and to direct the work of a relative. Appointment, employment, promotion or advancement of a relative, and the advocacy of these

actions for a relative, are prohibited by statute (5 U.S.C. 3110) and this exception does not allow these activities. It is recognized that the policy of Indian Self Determination, the application of Indian Preference and the isolation of many Indian Affairs installations may create situations where Indian Affairs employees exercise supervision or administrative control over an individual who is a relative. In such instances, except for emergency situations, all supervisory or administrative controls to be exercised over a relative shall be referred, without recommendation or advocacy, to the next higher administrative level for review and action.

(d) *Violation.* An individual supervised, appointed, employed, promoted, or advanced in violation of this section shall not receive salary. And, an employee who supervises, appoints, employs, promotes, advances or advocates these actions in violation of this section shall be subject to the sanctions in § 20.735-4.

[46 FR 58425, Dec. 1, 1981, as amended at 47 FR 42360, Sept. 27, 1982. Redesignated and amended at 58 FR 32447, June 10, 1993]

§ 20.735-9 Political activity.

(a) *Hatch Act.* 5 U.S.C. 7324 states generally that an employee may not use his or her official authority or influence for the purpose of interfering with or affecting the results of an election; or take an active part in political management or in political campaigns. An employee is subject to dismissal for violation of this prohibition. Persons who are employed on an irregular or occasional basis, e.g., experts and consultants, are subject to the political activity restrictions of 5 U.S.C. 7324 while in an active duty status only and for the entire 24 hours of any day of actual employment. In accordance with regulations contained in 5 CFR part 733, the following definitions, permissible activities and prohibited activities help to interpret the restrictions in 5 U.S.C. 7324.

(1) Definitions include: (i) *Political party* means a National political party, a State political party, and an affiliated organization;

(ii) *Election* includes a primary, special, and general election;

(iii) *Nonpartisan election* means: (A) An election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential election received votes in the last preceding election at which presidential electors were selected, and

(B) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

(iv) "Partisan" when used as an adjective refers to a political party.

(2) "Permissible activities" consistent with the restrictions imposed by 5 U.S.C. 7324 include the right to: (i) Register and vote in any election;

(ii) Express opinions as an individual privately and publicly on political subjects and candidates;

(iii) Display a political picture, sticker, badge, or button;

(iv) Participate to the extent consistent with law in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(v) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(vi) Attend a political convention, rally, fund-raising function, or political gathering;

(vii) Sign a political petition as an individual;

(viii) Make a financial contribution to a political party or organization except as restricted by provisions explained in paragraph (c) of this section;

(ix) Take an active part as an independent candidate, or in support of an independent candidate, in a partisan election covered by rules in 5 CFR 733.124;

(x) Take an active part as a candidate or in support of a candidate, in a nonpartisan election;

(xi) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(xii) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law; and

(xiii) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise one's efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the Department.

(3) "Prohibited activities" include, but are not limited to: (i) Any activity listed in paragraph (a)(2) of this section if participation in the activity would interfere with the efficient performance of official duties or create a conflict or apparent conflict of interest;

(ii) Serving as an officer of a political party, a member of a National, State, or local committee of a political party, an officer or member of a committee of a partisan political club, an officer in a Political Action Committee, or being a candidate for any of these positions. With respect to membership in Political Action Committees employees should obtain guidance from their ethics counselor;

(iii) Organizing or reorganizing a political party organization or political club;

(iv) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;

(v) Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or a political party, or political club;

(vi) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;

(vii) Becoming a candidate for, or campaigning for, an elective public office in a partisan election except as indicated in paragraph (a)(2)(ix) of this section;

(viii) Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;

(ix) Acting as recorder, watcher, challenger, or similar officer at the

polls on behalf of a political party or a candidate in a partisan election;

(x) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

(xi) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign literature, or similar material;

(xii) Serving as a delegate, alternate, or proxy to a political party convention;

(xiii) Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office; and

(xiv) Initiating or circulating a partisan nominating petition.

(4) Additional information regarding employees' participation in political activities, including certain exceptions for employees appointed by the President, by and with the advice and consent of the Senate, is contained in 5 CFR part 733.

(b) *Political affiliation.* No person in the Executive Branch with authority to take or recommend a personnel action relative to a person in, or an eligible candidate or applicant for, a position in the competitive service, may make inquiry concerning his or her political affiliation. All disclosures concerning political affiliation shall be ignored. Except as may be authorized or required by law, discrimination may not be exercised, threatened, or promised by any person in the Executive Branch against or in favor of an employee in, or an eligible candidate or applicant for, a position in the competitive service because of his or her political affiliation (5 CFR 4.2).

(c) *Federal Election Campaign Act Amendments of 1979.* The Federal Election Campaign Act Amendments of 1979, 93 Stat. 1339, prohibit, under threat of criminal penalty, Federal employees from contributing to a person if the person receiving said contribution is the employer or employing authority of the contributor.

[46 FR 58425, Dec. 1, 1981, as amended at 47 FR 42360, Sept. 27, 1982. Redesignated at 58 FR 32447, June 10, 1993]

§ 20.735-10 Other conduct.

(a) *Sexual harassment—(1) Definition.* Sexual harassment means deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome.

(2) No employee shall sexually harass another employee of the Executive Branch or a member of the public having business with the Department. All employees and members of the public are entitled to work or conduct official business in an environment free from sexual harassment. Sexual harassment debilitates morale and productivity, and undermines confidence in the fairness and integrity of government. Sexual harassment is, therefore, a form of employee misconduct which shall subject the employee engaging in such conduct to discipline. Sexual harassment also constitutes sex discrimination, which is a prohibited personnel practice, when it affects an employee's employment status or conditions on the basis of conduct related to gender rather than job performance, such as the taking or refusal to take a personnel action, including, but not limited to, promotion of employees who submit to sexual advances or refusal to promote employees who resist or protest sexual overtures. For example, a supervisor who, on or off duty, uses implicit or explicit sexual behavior to control, influence, or affect the career, salary, or job performance of an employee is engaging in sexual harassment, sex discrimination and a prohibited personnel practice.

(3) *Reporting a violation.* (i) If an employee believes he or she is being or has been sexually harassed, and such harassment relates to his or her employment status or conditions, such as promotion, training, step increase, work assignments, etc., the standard Equal Employment Opportunity complainant process or the appropriate grievance process can be followed. The affected employee may contact either his or her Equal Employment Opportunity Officer or Personnel Specialist for further information concerning these procedures.

(ii) Individuals may also report any incident of sexual harassment to the Inspector General either by using the hotline (703) 235-9399 or 800-424-5081

(toll free) or by writing to Post Office Box 1593, Arlington, VA 22210.

(iii) Individuals who in good faith report violations of this sexual harassment policy are assured of freedom from restraint, interference, coercion, discrimination or reprisal for reporting violations, and any employee found to have violated this assurance shall be disciplined pursuant to § 20.735-4.

(b) *Scope of authority.* Employees shall not engage in any conduct or activity which is in excess of his or her authority, or is otherwise contrary to any law or departmental policy.

(c) *Selling or soliciting.* Employees and other persons are prohibited from selling or soliciting for personal gain within any building or on any lands occupied or used by the Department. Exception is granted for Department authorized operations, including, but not limited to, the Interior Department Recreation Association, the Indian Arts and Crafts store, and for cafeteria, newsstand, snack bar and vending machine operations which are authorized by the Department for the benefit of employees or the public.

(d) *Habitual use of intoxicants.* An employee who habitually uses intoxicants to excess may be subject to removal (5 U.S.C. 7352). The provisions of 370 DM 792 should be thoroughly reviewed before considering any such action.

(e) *Community and professional activities.* (1) Employees are encouraged to participate in the activities of professional societies and civic organizations whose purpose and objectives are not inconsistent with those of the bureau in which they are employed.

(2) Participation in professional societies or organizations must not be incompatible with an employee's performance at his or her regularly assigned duties or detrimentally affect the Department's capacity to accomplish its missions.

(3) No Indian Affairs employee may hold a position on a tribal election board, or on a tribal school board which oversees Bureau of Indian Affairs schools. An employee in Indian Affairs may hold an office in other organizations, including organizations involving his or her own tribe in accordance with provisions in § 20.735-29(c).

(f) *Appropriations, legislation and lobbying.* (1) Unless expressly authorized by Congress, employees are prohibited from using any part of the money appropriated by any enactment of Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any *legislation* or *appropriation* by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; this prohibition does not prevent any employee from communicating to Members of Congress on the request of any Member or through proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business (18 U.S.C. 1913). The right of employees, individually or collectively, to otherwise petition Congress or a Member of Congress or to furnish information to either House of Congress, or to a Committee or Member thereof, shall not be interfered with or denied (5 U.S.C. 7211).

(2) Employees are also required to refrain from promoting or opposing legislation relating to programs of the Department without the official sanction of the proper Departmental authority.

(g) *Unlawful organizations.* An employee may not advocate the violent overthrow of our constitutional form of government nor may an employee be a member of an organization that he or she knows advocates the violent overthrow of our constitutional form of government.

(h) *Patents.* Patent regulations issued by the Secretary, 43 CFR part 6, define the rights and obligations of employees with respect to any inventions made or developed while they are employed in the Department. Under the regulations each employee shall submit a report on any invention made or developed to the Solicitor through supervisory channels. This includes inventions developed on Government time and those developed on the employee's time and with his or her materials.

(i) *Notary.* An employee is prohibited from charging fees for performance of

any notarial act for any employee of the Federal Government acting in his or her official capacity or for any person during the hours of such notary's service to the Government (E.O. 977, Nov. 24, 1908).

(j) *Penalty and franked mail and official stationery.* An employee is prohibited from using official Government envelopes, with or without applied postage, or official letterhead stationery for personal business (18 U.S.C. 1719 and 39 U.S.C. 3201 *et seq.*). These statutory requirements prohibit employees from using Government envelopes to mail their own personal job applications.

(k) *Fraud or false statements in a Government matter.* Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined the penalties applicable to violation of 18 U.S.C. 1001. Special attention is required in the certification of time and attendance reports, applications for employment, requests for travel reimbursement, and purchase orders and receiving forms.

(l) *Use of official title.* Employees are prohibited from using their official titles in conducting private business or participation in private or public group activities. Use is strictly limited to those occasions and circumstances where representation is official.

(m) *Carrying of firearms.* Employees, except those specifically designated to perform enforcement, police or other official duties requiring the use of firearms, are prohibited from carrying or having in their possession firearms on property under the control of the Secretary of the Interior. Employees who are officially stationed in parks, refuges, Indian reservations, other Tribal lands or other wilderness areas which are known to be inhabited by wild animals, are permitted, when on those lands, to carry and use firearms for personal protection as permitted by ex-

isting policy or as authorized by the park, refuge or area supervisor. Notwithstanding this paragraph, employees who are not on official duty may carry firearms on Departmental lands under the same conditions and in accordance with procedures and authorizations established for members of the general public.

(n) *Labor practices.* Employees are prohibited from striking against the Government of the United States (5 U.S.C. 7311). Additional information regarding affiliation with employee organizations is found in the Department Manual, Part 370, Chapter 711, Labor Management Relations.

[46 FR 58425, Dec. 1, 1981; 47 FR 42360, Sept. 27, 1982. Redesignated and amended at 58 FR 32447, June 10, 1993]

Subpart C—Conflict of Interest Prohibitions

§ 20.735–20 Scope of subpart.

(a) This subpart deals with restrictions on the outside financial and other interests of employees and on outside work by employees.

(b) General conflict of interest prohibitions based on Executive Order 12674 are contained in 5 CFR part 2635. Restrictions on outside work are contained in 5 CFR part 2635 (Subpart H). The remainder of Subpart C consolidates the Department's regulatory prohibitions against ownership of certain interests in areas of special Departmental responsibility: (1) Federal lands, (2) mining activity, and (3) Indians and Alaska natives.

(c) For purposes of applying the prohibitions in § 20.725–23, Interests in Federal lands; § 20.735–25, Interests in mining activities; and § 20.735–26, Interests in trading with Indians; of this subpart, the term "Office of the Secretary and other Departmental Offices reporting directly to a Secretarial Officer" means the following offices:

The Immediate Office of the Secretary (except for the Office of Historically Black College and University Programs and Job Corps);
Office of the Solicitor;
Office of Inspector General;
Office of Hearings & Appeals;

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Office of Congressional and Legislative Affairs;
Office of Public Affairs;
All Assistant Secretaries, their immediate office staff and heads of bureaus which are subordinate to an Assistant Secretary.

The following offices under the Assistant Secretary—Policy, Management and Budget:

Office of Acquisition & Property Management;
Office of Budget;
Office of Environmental Affairs;
Office of Program Analysis.

(d) Except where otherwise indicated, the restrictions contained in this subpart apply without regard to grade level or the requirements for filing of financial interest statements.

[46 FR 58425, Dec. 1, 1981, as amended at 49 FR 6375, Feb. 21, 1984; 58 FR 32447, June 10, 1993]

§ 20.735-21 Statutory prohibitions.

(a) The criminal statutes generally spoken of as the conflict of interest laws, insofar as they relate to regular employees, are 18 U.S.C. 203, 205, 207, 208, and 209. These statutory prohibitions, discussed in 5 CFR 2635, generally apply to special government employees, as well.

(b) In addition to the prohibitions that are generally applicable, the following statutory prohibitions are imposed on specific classes of employees or former employees. These prohibitions apply to both regular and special government employees within the identified class.

(1) The officers, clerks, and employees in the Bureau of Land Management are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and any person who violates this section shall forthwith be removed from his or her office (43 U.S.C. 11) See § 20.735-23 for prohibitions on interests in Federal lands by employees of the Department generally.

(2) Neither the Director nor any employee of the Bureau of Mines, in conducting inquiries and investigations authorized under 30 U.S.C. 1, 3, and 5-7 shall have any personal or private interest in any mine or the products of

any mine under investigation, nor shall they accept employment from any private party for services in the examination of any mine or private mineral property or issue any report as to the valuation or the management of any mine or other private mineral property (30 U.S.C. 6). See § 20.735-25 for prohibitions on ownership of mining interests by employees generally.

(3) The Director and employees of the Geological Survey shall have no personal or private interests in the lands or mineral wealth of the region under survey, and shall execute no surveys or examinations of private parties or corporations. Members of the Geological Survey are prohibited from holding any personal or private direct interest, in lands whose title is in the United States. They are also prohibited from holding personal or private direct interests in the mineral wealth of such lands (43 U.S.C. 31(a)). The restrictions of 43 U.S.C. 31(a) are extended to the Director and employees of the Minerals Management Service. Refer to § 20.735-23 for prohibitions on interests on Federal lands and resources by employees of the Department generally.

(4) No person employed in the Bureau of Indian Affairs shall have any interest or concern in any trade with the Indians. See § 20.735-26 for prohibitions and exceptions concerning trade with Indians. Any person violating this prohibition shall be liable to a penalty of \$5,000, imprisoned not more than six months, or both and shall be removed from his or her office. (Sec. 1, Pub. L. 96-277, 94 Stat. 544.)

(5) No employee of the Office of Surface Mining Reclamation and Enforcement and no other federal employee who performs functions or duties under the Surface Mining Control and Reclamation Act shall have any direct or indirect financial interest in surface or underground coal mining operations (30 U.S.C. 1211(f)). Regulations implementing this prohibition are found in 30 CFR part 706 and in § 20.735-24 of this part.

(Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.))

[58 FR 32447, June 10, 1993]

§ 20.735–22 Special provisions governing outside work and employee filing requirements.

(a) General provisions governing outside work and activities are contained under 5 CFR part 2635 (Subpart H).

(b) *Requests for approval of outside work.* (1) Bureaus may require employees to obtain approval to engage in outside work by issuing supplementary requirements. (2) Employees who are uncertain about the propriety of a potential outside work or outside activity situation should seek guidance from their appropriate ethics or deputy ethics counselor prior to engaging in outside work or activity.

(c) Bureau of Land Management employees are prohibited from working as real estate agents and realty specialists. Appraisers employed in the Bureau of Indian Affairs are prohibited from working as real estate agents or appraisers. Such employees, however are not required to cancel a real estate license, but, rather, may maintain the license on an inactive basis.

(d) *Special filing conditions for special government employees.* (1) In an instance involving the proposed employment of a special government employee for highly specialized and limited duties, the head of the bureau or office may propose to the Designated Agency Ethics Official a reporting of financial interests restricted to such interests as may be determined to be relevant to the duties the special government employee is to perform. The Designated Agency Ethics Official may, under the provisions of 5 CFR 2634.905, exclude the special government employee from all or a portion of the confidential reporting requirements of the SF-450. Any reporting requirement of the SF-450 must be satisfied prior to the employment of the special government employee.

(2) In an instance involving the proposed employment of an expert, consultant or advisory committee member as a special government employee, it may be desirable to retain an individual who has personal financial interests in an industry or a company that may be affected by the performance of the person's official duties. In such instances retention of otherwise prohibited holdings will be allowed if the ap-

pointing officer certifies in writing that:

(i) No other equally qualified expert, consultant or member is available, or

(ii) The reason for proposing the special government employment of the individual is precisely because that individual will represent the industry involved as an employee of the industry.

(e) *Certificates of disclaimer.* (1) The following statutory restrictions apply specifically to the heads and employees of the bureaus and offices identified and shall also apply to employees in the Office of the Secretary and in other Departmental offices reporting directly to a Secretarial officer, who are in pay grades equivalent to GS-16 and above or who are in merit-pay positions as described in 5 U.S.C. 5401(b)(1): 43 U.S.C. 31(a)—Geological Survey; 18 U.S.C. 437—Indian Affairs; 43 U.S.C. 11—Bureau of Land Management; (4) 30 U.S.C. 6—Bureau of Mines. In addition, the statutory restrictions of 43 U.S.C. 31(a) shall apply to the Director and employees of the Materials Management Service. Refer to § 20.735–20(c) for the definition of Office of the Secretary and other Departmental Offices.

(2) Each employee covered by one or more of these restrictions shall sign a certificate of disclaimer upon entrance to or upon transfer to these bureaus or offices. The employee's signature will indicate that he or she:

(i) Is aware of the specific restrictions pertinent to his or her employment, and

(ii) Is in compliance with such restrictions.

(3) If an employee is unable to sign the certificate, he or she must submit a statement of facts to the appropriate ethics counselor for review and appropriate action.

(4) Signed certificates of disclaimer shall be filed and maintained by the employee's deputy ethics counselor.

[58 FR 32448, June 10, 1993]

§ 20.735–23 Interests in Federal lands.

(a) *Definitions.* (1) *Federal lands* means lands or resources or an interest in lands or resources administered or controlled by the Department of the Interior, including, but not limited to, the Outer Continental Shelf.

(2) *Outer Continental Shelf* means all submerged lands lying seaward outside

of the area of “lands beneath navigable waters” as defined in 43 U.S.C. 1301(a), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(3) *Direct interest in Federal lands* means any employee ownership or part ownership in Federal lands or any participation in the earnings therefrom, or the right to occupy or use the property or to take any benefits therefrom, based upon a contract, grant, lease, permit, easement, rental agreement, or application. Direct interest in Federal lands also includes:

(i) Membership or outside employment in a business which has interests in Federal lands, and

(ii) Ownership of stock or other securities in corporations determined by the Department to have an interest in Federal lands directly or through a subsidiary.

(4) *Indirect interest in Federal lands* means any ownership or part ownership of an interest in Federal lands by an employee in the name of another where the employee still reaps the benefits. Indirect interest in Federal lands also includes:

(i) Holdings in land, mineral rights, grazing rights or livestock which in any manner are connected with or involve the substantial use of the resources or facilities of the Federal lands, or

(ii) Substantial holdings of a spouse or dependent child.

(b) *Prohibitions.* (1) The Director and members of the U.S. Geological Survey, Bureau of Land Management and of the Minerals Management Service are prohibited from:

(i) Voluntarily acquiring a direct or indirect interest in Federal lands; or

(ii) Retaining a direct interest in Federal lands acquired voluntarily or by any other method, before or during employment by the Department in their own name or in the name of their spouse, dependent child, or solely-owned or family-owned business except that they may acquire or retain such interests in accordance with the waiver criteria in paragraph (e) of this section.

(2) The Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer, who are in pay

grades equivalent to GS-16 and above or who are in merit-pay positions as described in 5 U.S.C. 5401(b)(1), are prohibited from:

(i) Voluntarily acquiring a direct or indirect interest in Federal lands,

(ii) Retaining a direct interest in Federal lands acquired voluntarily or by any other method before or during employment by the Department. *Refer to §20.735-20(c)* for the definition of Office of the Secretary and other Departmental Offices.

(3) All Department employees are prohibited from acquiring or retaining any claim, permit, lease, small tract entries, or other rights in Federal lands either in their own name or in the name of their spouse, dependent child, or solely-owned or family-owned business except that they may acquire or retain such interests in accordance with the waiver criteria in paragraph (e) of this section. Also, employees, other than those identified in paragraph (b)(1) and (2) of this section, may purchase or retain stocks or securities traded on the open market in companies having interests in Federal lands, provided that such acquisition will not interfere or appear to interfere with the proper and impartial performance of their official duties.

(4) No employee whose duties are connected in any way with Federal lands, may hold a direct or indirect financial interest in Federal lands that conflicts substantially or appears to conflict substantially with his or her Government duties or responsibilities.

(c) The prohibitions of this section apply to both regular and special government employees.

(d) *Exceptions.* (1) A Bureau of Land Management employee (or the spouse of a Bureau of Land Management employee) stationed in Alaska, may purchase or lease one tract of land, not exceeding five acres, for residence or recreation purposes in that state.

(2) Except for U.S. Mineral surveyors an individual employed on an intermittent or seasonal basis for a period not exceeding 180 working days in each calendar year, and a special government employee engaged in field work relating to land, range, forest, and mineral

conservation and management activities, and the spouse of such an individual shall not be precluded from retaining any interest, including renewal or continuation of existing rights, in Federal lands, provided that such an individual shall not acquire any additional interest in Federal lands during employment.

(3) An employee or any member of an employee's family may acquire wild free-roaming horses or burros from Federal lands for maintenance and protection through a cooperative agreement entered into in accordance with 43 CFR 4740.5 and 4740.4-2.

(4) Nothing in this section shall prohibit the recreational or other personal and noncommercial use of the Federal lands by an employee, the employee's spouse or dependent child, on the same terms as use of the Federal lands is available to the general public.

(5) Employees in Indian Affairs are not prohibited by the provisions of this section from acquiring or retaining interests in Federal lands controlled by the Department for the benefit of Indians and Alaska Natives provided such interests are otherwise legal.

(6) The prohibitions imposed on Minerals Management Service employees by paragraph (b) of this section are imposed by the Secretary through regulatory extension of the statutory provisions in 43 U.S.C. 31(a). Accordingly, the Secretary authorizes the Director, Minerals Management Service (LMS), to approve exceptions to this regulatory extension for individual LMS employees or for a class of LMS employees for cause. Exceptions granted by the Director for a class of employees shall be with the prior concurrence of the Designated Agency Ethics Official.

(e) *Waivers.* (1) The Designated Agency Ethics Official may approve the retention of an interest in Federal lands for employees identified in §20.735-24(b) when there is little or no relationship between the employee's functions or duties and the particular interest in Federal lands and:

(i) The employee, or the spouse, or dependent child of the employee, acquired such an interest by gift, devise, bequest, or operation of law, or

(ii) The employee, or the spouse, or dependent child of the employee, ac-

quired such an interest prior to the time the employee entered on duty in the Department, or

(iii) In the case of stock or securities traded on the open market, divestiture would constitute a financial hardship, or

(iv) The employee, or the spouse or dependent child of the employee acquired such an interest through a pre-existing trust or inherited trust (not established by themselves) provided, the employee has no control over its management or assets.

(2) No waiver is needed for holding an interest consistent with paragraph (d) of this section.

(3) Each request for waiver must consist of: (i) A written request submitted to the Designated Agency Ethics Official within 90 days from the effective date of these regulations, within 60 days of employment by the Department or within 60 days of being notified that the holding in Federal lands is a prohibited holding.

(ii) A full and complete disclosure of the interest in Federal lands,

(iii) A disclosure of the date and manner of acquisition (evidence to support this information may be required),

(iv) An explanation of why denial of the right to retain such interests will work a hardship upon the employee, and

(v) An opinion explaining why retention of the interest will not be contrary to the interests of the Department.

(4) Waivers for U.S. Geological Survey and Bureau of Land Management employees shall not be permitted where retention of the interest violates 43 U.S.C. 31(a) or 43 U.S.C. 11, respectively.

(f) *Advisory councils.* Nothing contained in this section shall disqualify individuals appointed pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1739, as members of advisory boards or councils from acquiring or retaining grazing licenses or permits issued pursuant to section 3 of the Taylor Grazing Act (43 U.S.C. 315b), or any other interest in land or resources administered by the Bureau of Land Management: Provided, that in no case shall the member of any such

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board or council participate in any advice or recommendation concerning such license or permit in which such member is directly or indirectly interested.

(g) *Requests for advice.* When an employee is in doubt as to whether the acquisition or retention of any interest in lands or resources administered by the Department would violate the provisions of this section, a statement of the facts should be submitted promptly by the individual involved to his or her Ethics Counselor for transmittal to the Designated Agency Ethics Official for guidance.

[46 FR 58425, Dec. 1, 1981; 47 FR 2995, Jan. 21, 1982, as amended at 47 FR 42361, Sept. 27, 1982; 49 FR 6375, Feb. 21, 1984; 49 FR 18098, Apr. 27, 1984. Redesignated at 58 FR 32447, June 10, 1993]

§ 20.735-24 Interests in underground or surface coal mining operations.

(a) *Definitions.* (1) *Direct financial interest in underground or surface coal mining operations* 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 also include employment, pensions, creditor, real property and other financial relationships.

(2) *Indirect financial interest in underground or surface coal mining operations* 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, dependent 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, dependent children or other resident relatives hold a financial interest.

Refer to Note in § 20.735-21(b)(4) for examples of the kinds of interests that are not covered.

(3) *Coal mining operation* means the business of developing, producing, preparing or loading bituminous coal, sub-

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bituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur.

(4) *Performing any function or duty under the Surface Mining Control and Reclamation Act of 1977* means those decisions or actions, which if performed or not performed by an employee, affect the programs under that Act.

(b) *Prohibitions.* (1) Neither the Director nor any member of the Office of Surface Mining Reclamation and Enforcement shall have a direct or indirect financial interest in underground or surface coal mining operations. The Assistant Secretary—Energy and Minerals, her or his staff, and no other employee performing any function or duty under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1200 *et seq.*) shall have a direct or indirect financial interest in underground or surface coal mining operations. Section 201(f) of the Act provides that anyone who knowingly violates these prohibitions 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.

(2) No other employee whose duties are connected in any way with coal mining activities may hold a direct or indirect financial interest in underground or surface coal mining operations or in mining enterprises conducting coal mining activities, when that financial interest conflicts substantially or appears to conflict substantially with his or her government duties or responsibilities (Executive Order 11222).

(c) The prohibitions of this section apply to both regular and special government employees.

(d) Employees are encouraged to review regulations contained in 30 CFR part 706 which pertain to the prohibitions of this section.

[46 FR 58425, Dec. 1, 1981. Redesignated at 58 FR 32447, June 10, 1993]

§ 20.735-25 Interests in mining activities.

(a) *Definitions.* (1) *Direct interest in mining activities* means any employee ownership or part ownership in mining activities or any participation in the earnings therefrom, or the right to take any benefits therefrom based upon

a contract, grant, lease, permit, easement, rental agreement, or application. Direct interest in mining activities includes:

(i) Membership or outside employment in a firm which has interests in mining activities, and

(ii) Ownership of stock or other securities in a corporation which has interests in mining activities directly or through a subsidiary.

(2) *Indirect interest in mining activities* means any ownership or part ownership of an interest in mining activities by an employee in the name of another where the employee still reaps the benefits. An indirect interest in mining activities also includes:

(i) Holdings in land, mineral rights, or other rights which in any manner are connected with mining activities, and

(ii) Substantial holdings of a spouse or dependent child.

Refer to Note §20.735-21(b)(4) for examples of the kinds of interests that are not covered.

(3) *Mining activities* means any mining operations which: (i) Involve exploration, development, or extraction of oil, gas, coal or other minerals, or reclamation of lands after extraction, and

(ii) Are or will be affected by programs, policies, research or other actions initiated by this Department.

(4) *Investigation* means inquiries, scientific and technological research, tests and other activities conducted under provisions in 30 U.S.C. 1, 3, and 5 to 7.

(5) *Mine or products of any mine* means the specific mine or products of the specific mine under investigation and does not include other mines or the products of other mines owned by a company or other entity that are not under investigation.

(6) *Inside information* means Government information that is not available to members of the public upon request or through libraries.

(7) *Private mining enterprise* means any business organization involved in mining activities.

(b) *Prohibitions.* (1) Neither the Director nor any member of the Bureau of Mines shall: (i) Have any personal or private interest in any mine or the

products of any mine under investigation;

(ii) Accept employment from any private party for services in the examination of any mine or private mineral property;

(iii) Issue any report as to the valuation or the management of any mine or other private mineral property; or

(iv) Use inside information obtained in the collection of mineral or energy resources statistics for private gain.

(2) Neither the Director nor any member of the Geological Survey shall hold substantial personal or private interests, direct or indirect, in any private mining activities in the United States. The Director of Geological Survey may authorize exceptions to this restriction for cause on an individual basis.

(3) The Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer, who are in pay grades equivalent to GS-16 and above or who are in merit-pay positions as described in 5 U.S.C. 5401(b)(1), are prohibited from: (i) Having any personal or private interest in any mine or the products of any mine under investigation by Bureau of Mines employees;

(ii) Accepting employment from any private party for services in the examination of any mine or private mineral property;

(iii) Issuing any report as to the valuation or the management of any mine or other private mineral property; and

(iv) Using inside information obtained in the collection of mineral or energy resources statistics for private gain.

See §20.735-20(c) for the definition of Office of the Secretary and other Departmental Offices.

(4) No employee whose duties are connected in any way with mining activities may hold a direct or indirect interest in a mining activity or in a mining enterprise conducting mining activities when that interest conflicts substantially or appears to conflict substantially with his or her government duties or responsibilities.

(c) The prohibitions of this section apply to both regular and special government employees.

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(d) The Bureau of Mines may temporarily employ in a consulting capacity or in the investigation of special subjects, any engineer or other expert whose principal professional practice is outside of employment by the Bureau of Mines as permitted in 30 U.S.C. 6.

(e) *Waivers.* (1) The Designated Agency Ethics Official may approve the retention of an interest in mining activities for employees identified in § 20.735-27(b) when there is little or no relationship between the employees functions or duties and the particular interest in mining activities, and:

(i) The employee or the spouse, or dependent child of the employee acquired such an interest by gift, devise, bequest, or by operation of law, or

(ii) The employee or the spouse, or dependent child of the employee, acquired such an interest prior to the time the employee entered on duty in the Department, or

(iii) In the case of stock or securities traded on the open market, divestiture would constitute a financial hardship, or

(iv) The employee or the spouse or dependent child of the employee acquired such an interest through a pre-existing trust or inherited trust (not established by themselves) provided, the employee has no control over its management or assets.

(2) Each request for waiver must consist of: (i) A written request submitted to the Designated Agency Ethics Official within 90 days from the effective date of these regulations, within 60 days of employment by the Department or within 60 days of being notified that the holding in mining activities is a prohibited holding.

(ii) A full and complete disclosure of the interest in mining activities,

(iii) A disclosure of the date and manner of acquisition (evidence to support this information may be required),

(iv) An explanation of why denial of the right to retain such interests will work a hardship upon the employee, and

(v) An opinion explaining why retention of the interest will not be contrary to the interest of the Department.

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(3) Waivers shall not be applicable to cases where retention of the interest violates a statutory prohibition.

[46 FR 58425, Dec. 1, 1981; 47 FR 2995, Jan. 21, 1982, as amended at 47 FR 42361, Sept. 27, 1982. Redesignated at 58 FR 32447, June 10, 1993]

§ 20.735-26 Interests in trading with Indians.

(a) *Definitions.* For the purposes of this section,

(1) *Trade* means buying, selling, or bartering services, commodities or property with or without the use of money; and

(2) *Indian* means any member of an Indian tribe recognized as eligible for the services provided by the Bureau of Indian Affairs who is residing on a Federal Indian Reservation, on land held in trust by the United States for Indians, or on land subject to a restriction against alienation imposed by the United States. The term shall also include any such tribe and any Indian owned or controlled organization located on such a reservation or land.

(b) *Prohibitions.* No employee in Indian Affairs shall: (1) Have (other than as a lawful representative of the United States) any interest, in his or her own name, or in the name of another person where such employee benefits or appears to benefit from such interest—

(i) In any contract made or under negotiation with any Indian, for the purchase, transportation, or delivery of goods or supplies for any Indian, or

(ii) In any purchase or sale of any service of real or personal property (or any interest therein) from or to any Indian, or colludes with any person attempting to obtain any such contract, purchase, or sale.

(2) Make any purchase from or sale to an Indian of any real or personal property (or any interest therein) for the purpose of commercially selling, reselling, trading, or bartering such property; or

(3) Have any interest in any purchase or sale involving property or funds which are either held in trust by the United States for Indians or which are purchased, sold, utilized, or received in connection with a contract or grant to an Indian from the Bureau of Indian Affairs or the Indian Health Service, if

such officer, employee, or agent is employed in the office or installation of such Bureau or Service which recommends, approves, executes, or administers such transaction, grant, or contract on behalf of the United States except as authorized by 18 U.S.C. 437(b)(2)(B), as amended by section 1, Public Law 96-277, 94 Stat. 544.

(4) Acquire any interest in property held in trust, or subject to restriction against alienation imposed, by the United States unless the conveyance or granting of such interest in such property is otherwise authorized by law.

(c) *Extension of the prohibitions.* (1) The prohibitions in paragraph (b) of this section shall apply to the Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer, who are in pay grades equivalent to GS-16 and above or who are in merit-pay positions as described in 5 U.S.C. 5401(b)(1). See § 20.735-20(c) for the definition of Office of the Secretary and other Departmental Offices.

(2) The Designated Agency Ethics Official may grant a waiver to such employees when denial of the right to trade with Indians will work a hardship upon the employee, and for other good cause.

(d) The prohibitions of this section apply to both regular and special government employees covered by paragraphs (b) and (c) of this section.

(e) *Exceptions.* (1) Nothing contained in this section shall be construed as preventing any employee in Indian Affairs who is an Indian, of whatever degree of Indian blood, from obtaining or receiving any benefit or benefits made available to Indians generally or to any member of his or her particular tribe, under any Act of Congress, nor to prevent any such employee who is an Indian from being a member of or receiving benefits by reason of his or her membership in any Indian tribe, corporation, or cooperative association organized by Indians, when authorized under such rules and regulations as the Secretary or his designee shall prescribe.

(2) Employees in Indian Affairs, the Office of the Secretary and Other Departmental Offices may be permitted to trade with Indians or Indian organi-

zations under rules or regulations prescribed by the President or his designee.

(f) *Penalties.* In addition to divestiture or disciplinary action, any person employed in Indian Affairs who violates the prohibitions contained in paragraph (b) of this section shall be liable to a penalty of \$5,000 or imprisoned not more than six months or both, and shall be removed from his or her office notwithstanding any other provision of law concerning termination from Federal employment.

[46 FR 58425, Dec. 1, 1981; 47 FR 2996, Jan. 21, 1982. Redesignated at 58 FR 32447, June 10, 1993]

§ 20.735-27 Indian and Alaska Native organizations.

(a) *Definition.* The term *representative* means the occupant of an elective or other position in official governing body of the tribe, band, pueblo or corporation, or any position of the governing body which carries with it the right to vote in the proceedings of the body or to make substantial decisions on behalf of the governing body.

(b) *General restrictions.* Under the authority granted by 25 U.S.C. 472, the Secretary has determined that Indian and Alaska Native employees, whether regular or special government employees, are subject to the provisions of this part.

(c) *Interest in tribal affairs.* Many Indian or Alaska Native employees of the Department, especially within the Bureau of Indian Affairs, are members of federally-recognized tribes, bands, pueblos or corporations created under the Alaska Native Claims Settlement Act. These employees cannot absolve themselves of tribal membership or ownership in Indian or Alaska Native corporations. By law and policy, the Bureau of Indian Affairs must give preference to Indians in all personnel actions, and the Bureau is continually pursuing the policy of Indian Self-determination. In recognition of these factors, membership in an Indian tribe, band or pueblo which receives services from Interior, or ownership of interests in an Indian corporation established under the Indian Reorganization Act or Alaska Native corporation established

under the Alaska Native Claims Settlement Act, shall not be considered a conflicting interest except as restricted by the provisions of this section. Ownership of interests in an Indian or Alaska Native corporation shall be reported by the employee on the statement of employment and financial interests whenever such a statement is required.

(1) No person employed in Indian Affairs may hold a position on a tribal election board or on a tribal school board which oversees Bureau of Indian Affairs schools. Except for membership on a tribal election board and a tribal school board which oversees Bureau of Indian Affairs schools, an eligible person employed in Indian Affairs may, with the approval of the Deputy Assistant Secretary—Indian Affairs, become a candidate for office in his or her local tribe or may be appointed as a representative of his or her local tribe, if in the Deputy Assistant Secretary’s judgment no real or apparent conflict of interest is created. *See §20.735–21(b) for definitions of real and apparent conflict of interest.* Requests will be handled on a case-by-case basis and, if approved, will require that such duties be carried out while on:

- (i) Off duty hours,
- (ii) Leave without pay,
- (iii) Administrative leave, or
- (iv) An Intergovernmental Personnel Act assignment.

If service is provided to a tribe or Alaska Native Corporation in accordance with these special conditions, the employee may not thereafter, if the tribal organization with which he or she served is within the jurisdiction or area of responsibility of the office to which the employee is assigned, participate in his or her governmental capacity in a decision or recommendation involving a particular matter in which he or she participated while serving the tribal organization. It is the duty of the employee to identify to his or her supervisor the extent of participation in tribal matters and to request, when appropriate, to be relieved from acting on such matters in his governmental capacity.

(2) An Indian or Alaska Native may hold in the Bureau of Indian Affairs a policy or decisionmaking position, as

defined in the Bureau of Indian Affairs Manual Part 735, on his or her home reservation, Area Office, or in the Central Office, with approval of the Deputy Assistant Secretary—Indian Affairs when the following conditions are met:

(i) During tenure the employee does not lease land more than \$500 in value per year from the tribe or Alaska Native corporation for his or her personal benefit. The Deputy Assistant Secretary—Indian Affairs may authorize exceptions from the \$500 limitation on an individual basis for cause;

(ii) There is divestiture of any tribal financial interest (as well as any personal outside financial interest) that creates an apparent or actual conflict situation, unless such divestiture is precluded by law or the Deputy Assistant Secretary—Indian Affairs determines that factors, such as, but not limited to, tribal custom or severe financial hardship, provide a basis for authorizing an individual exception;

(iii) Acquisition of Indian lands is limited to five (5) acres or less during tenure in office and may be further restricted to no acquisition of Indian lands if the employee presently holds any Indian lands;

(iv) Acquisition of any loans or grants through the tribal governing body is prohibited during tenure in office by the employee, spouse, dependent children or other relatives residing in the employee’s home. As an exception, loans or grants are not prohibited for Higher Education and Adult Vocational Training programs;

(v) Any personal indebtedness to the tribal governing body is settled in full prior to appointment. The Appointing Office may grant extensions not to exceed 90 days after appointment; and

(vi) Any other specific conflict is satisfactorily resolved.

(3) An Indian or Alaska Native employee shall not make nor participate in a substantial manner in any decision of the Department if he or she has a private direct interest, as defined in §20.735–21, in the results of the decision. If the decision is one which the employee would be expected to make if he or she had no direct interest, the matter shall be referred to the next higher authority of the Department

which does not have such private direct interest in an appropriate form but without recommendation by the employee having a direct private interest.

(4) The restrictions stated in this section shall apply to temporary and intermittent employees and consultants employed by the Department, except employees or consultants who are members of boards or other organizations which have as a principal purpose consultation with the Department related to Indians and Alaska Natives.

(d) *Special conditions for Bureau of Indian Affairs employees.* Approval may not be granted to Bureau of Indian Affairs employees to serve in a key decisionmaking role at their home agency or area office if a close relative or family member holds an elected position with any tribe under the jurisdiction of the home agency or area office. For the purpose of this condition, family members are defined as: Father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

[46 FR 58425, Dec. 1, 1981. Redesignated at 58 FR 32447, June 10, 1993]

Subpart D—[Reserved]

Subpart E—Resolution of Conflicts of Interest

§ 20.735-40 Procedures for resolving conflicts or prohibited holdings.

(a) *Remedial action to effect resolution.*

(1) Violations of the regulations or the statutes referred to in this part by an employee may be cause for mandatory remedial action. Remedial action should normally be considered only after attempts to obtain voluntary resolution have failed. Voluntary resolution may include:

(i) Voluntary divestiture, or

(ii) Voluntary conversion to securities which are not prohibited or which do not create actual or apparent conflicts of interest with the employee's duties.

(2) If the Bureau Ethics Counselor decides that remedial action is required, immediate action shall be initiated to remedy the holding of prohibited financial interests or to eliminate the conflict or appearance of conflict of interest created by holding of a prohibited financial interest within a reasonable time, usually ninety days.

(b) Remedial action may include: (1) *Reassignment or restriction of the employee.* If an employee is in a job where there is a conflict of interest, it may be possible to reassign the employee to another job where no such conflict would exist. It may also be possible to restrict the employee from performing the particular duties that are creating the conflict or the appearance of a conflict of interest. Although the number of cases where this remedy can be used should be rare, the possibility should be explored before divestiture of the interest is ordered.

(2) *Divestiture of the interest.* If the conflict involves the ownership of stocks, lands, etc., or outside employment or business interest, the bureau Ethics Counselor may order the employee to divest himself or herself of the stocks, land, or business interest or to discontinue outside employment, whichever is appropriate. Divestiture of the interest shall be ordered in all situations where reassignment or restrictions of an employee will not resolve the conflict or where the conditions for a trust described below are not met. Evidence of divestiture must be provided in the form of broker's sale receipts or other appropriate documents.

(3) *Establishment of a qualified trust.* The Director, U.S. Office of Government Ethics, may allow an employee the option to place holdings in a qualified trust. A qualified trust is established when by written agreement, the employee gives control and legal title to a trustee. Detailed provisions covering the establishment of a qualified trust are contained in 5 CFR part 2634 (Subpart D).

(c) *Other forms of trust.* Employees who have pre-existing trusts or inherited trusts (not established by themselves) may, in rare instances and on a

case-by-case basis, receive authorization from the Designated Agency Ethics Official to continue the trust, provided the employee has no control over its management or assets.

(d) *Authority to order remedial action.* (1) Each bureau Ethics Counselor is authorized and shall order resolution of conflict of interest situations within his or her bureau. The advice of the appropriate Regional Solicitor, the Associate Solicitor—General Law, the Deputy Agency Ethics Official or the Designated Agency Ethics Official may be sought before such an order is issued. This authority to order remedial action may not be redelegated.

(2) A Deputy Assistant Secretary—Policy, Management and Budget is responsible for ordering resolution of conflict of interest situations for employees who file with the Director, Division of Personnel Services.

(3) The Deputy Secretary is responsible for ordering resolution of conflict of interest situations for employees who file with the Deputy Secretary or the Designated Agency Ethics Official. The Secretary shall order resolution of conflict of interest situations involving the Deputy Secretary.

(e) *Disciplinary action.* An employee who fails to comply with an order for remedial action is considered to be in violation of these regulations and shall be subject to disciplinary action, as provided by § 20.735-4.

[46 FR 58425, Dec. 1, 1981, as amended at 58 FR 32449, June 10, 1993]

§ 20.735-41 Appeal procedures.

(a) *When and how to appeal.* An employee has the right to appeal an order for remedial action under § 20.735-40 and shall have 30 days from the date of the remedial action order to exercise this right before any disciplinary action may be initiated. For appeals of remedial orders issued under § 20.735-40, the procedures described in 370 DM 771 may not be used in lieu of or in addition to those of this section. Each appeal shall be made in writing and shall contain:

- (1) The basis for appeal,
- (2) Facts supporting the basis, and
- (3) The telephone number where appellant can be reached to discuss facts pertinent to the appeal.

(b) *Where to appeal.* (1) Orders for remedial action issued by the Assistant Secretary—Policy, Management and Budget or by a bureau Ethics Counselor may be appealed to the Deputy Secretary whose decision shall be final.

(2) Orders for remedial action issued by the Deputy Secretary may be appealed to the Secretary whose decision shall be final.

(c) *Review Board analysis and recommendations.* (1) Each appeal shall be considered by a Review Board consisting of a program Assistant Secretary selected by the Designated Agency Ethics Official, the Associate Solicitor—General Law, and the Director or Deputy Director Office of Personnel. Assistant Secretaries may delegate authority to serve on the Review Board to a Deputy Assistant Secretary who has not been involved, and who has not advised or made a decision on the issue or on the order for remedial action.

(2) The Deputy Agency Ethics Official shall serve as secretary to the Board, except for cases in which he or she has previously participated. In such cases, the Board shall designate an employee who has not previously been involved with the case to serve as secretary.

(3) The Review Board members shall:

(i) Obtain from the appropriate ethics counselor a full statement of actions and considerations which led to the order for remedial action including any supporting documentation or files used by the Ethics Counselor.

(ii) Obtain from the employee all facts, information, exhibits for documents which he or she feels should be considered before a final decision is made.

(iii) The secretary to the Board shall prepare a summary of the facts pertinent to the appeal. When appropriate, the Board may provide for personal appearance by the appellant before the Board if necessary to ascertain the circumstances concerning the appeal or may designate the Board secretary or another employee to conduct further fact finding, or may do both. Fact finding procedures shall be carried out by a person(s) who

(A) Has not been involved in the matter being appealed and

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(B) Who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in, the matter being appealed.

(iv) Establish a file containing all documents related to the appeal, which shall be available to the appellant and his or her representative.

(v) Provide to the official who will decide the appeal an advisory recommendation on the appeal. The views of dissenting members of the review board shall also be provided.

(d) *Assurances to the appellant.* Each appellant is assured of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal in presenting an appeal,

(2) A reasonable amount of official time to present the appeal if the employee is otherwise in a duty status,

(3) The right to obtain counseling from an ethics counselor of the Department,

(4) The right to be accompanied, represented, and advised by a representative of his or her own choosing. The Board may disallow the choice of an individual as a representative if such representation would result in a conflict of interest or position which would conflict with the priority needs of the Department or which would give rise to unreasonable costs to the Government.

(e) *Assurances to the appellant's representative.* Each person chosen to represent an appellant is assured of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal, and

(2) A reasonable amount of official time to present the appeal if the representative is an employee of the Department and is otherwise in a duty status.

[46 FR 58425, Dec. 1, 1981. Redesignated and amended at 58 FR 32448, 32449, June 10, 1993]

PART 21—OCCUPANCY OF CABIN SITES ON PUBLIC CONSERVATION AND RECREATION AREAS

Sec.

21.1 Purpose.

21.2 Scope of regulations.

21.3 Definitions.

21.4 Occupancy under permit of privately owned cabins on recreation areas and conservation areas.

21.5 Occupancy under permit of Government-owned cabins on public recreation and conservation areas.

21.6 Cabin site occupancy where a recreation or conservation area has been leased to, or turned over to, another Federal or non-Federal public agency for administration.

21.7 Occupancy by trespassers.

21.8 Appeals.

AUTHORITY: Sec. 10, 32 Stat. 390; 43 U.S.C. 373; 52 Stat. 609, as amended, 43 U.S.C. 682; R.S. 2478, 43 U.S.C. 1201; 44 Stat. 471, as amended, 43 U.S.C. 869; 76 Stat. 653, 16 U.S.C. 460; 48 Stat. 402, as amended, 16 U.S.C. 664; 33 Stat. 614, 16 U.S.C. 686; 45 Stat. 448, 16 U.S.C. 690; 43 Stat. 651, 16 U.S.C. 725; 48 Stat. 1270, 43 U.S.C. 315; 39 Stat. 535, 16 U.S.C. 3.

SOURCE: 32 FR 8361, June 10, 1967, unless otherwise noted.

§ 21.1 Purpose.

This part establishes (a) when, and by what standards, use of conservation and recreation areas under private cabin permits must be modified or discontinued so as to allow the public use of such areas and (b) the procedures for renewing, extending, phasing out, or terminating private cabin permits. No current permits or any valid existing rights, are, per se, canceled by the provisions of this part. However, permits may be canceled for cause, or pursuant to termination provisions within the permit itself.

§ 21.2 Scope of regulations.

The provisions of this part apply to all recreation or conservation areas administered by the Department of the Interior, including recreation or conservation areas leased or transferred for administration to other Federal and non-Federal public agencies, wherever the Department of the Interior retains jurisdiction over the issuance of cabin site permits by such other agencies. The provisions of this part do not modify or cancel any existing arrangement whereby the Department of the Interior or bureau or office thereof has leased, or turned over for administration, a public recreation or conservation area to another Federal or non-Federal public agency. The provisions of this part will also provide policy