

PART 8400 [RESERVED]

PART 8401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sec.

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AUTHORITY: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp. p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

SOURCE: 61 FR 39871, July 31, 1996, unless otherwise noted.

§ 8401.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to the employees of the Federal Mine Safety and Health Review Commission (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635. Commission employees also are subject to the executive branch financial disclosure regulations at 5 CFR part 2634.

§ 8401.102 Prohibited financial interests.

(a) *Prohibition.* Except as provided in this section, no employee (other than a special Government employee), or spouse or minor child of such an employee, shall have a financial interest, including compensated employment or indebtedness, in any company or other person engaged in mining activities subject to the Federal Mine Safety and Health Act of 1977 (Federal Mine Safety and Health Act), 30 U.S.C. 801 *et seq.*

(b) *Exceptions.* (1) This section does not prohibit an employee, or the spouse or minor child of an employee, from investing in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in the securities of any company or other person engaged in mining activities subject to the Federal

Mine Safety and Health Act, provided that the employee neither:

(i) Exercises control over the financial interests held in the fund; nor

(ii) Has the ability to exercise control over the financial interests held in the fund.

(2)(i) Unless divestiture is required by paragraph (c) of this section, this section does not prohibit an employee, or the spouse or minor child of an employee, from owning or controlling securities of any company or other person engaged in mining activities subject to the Federal Mine Safety and Health Act, whenever:

(A) Ownership or control was acquired prior to the employee's commencement of employment, through a change in marital status, or through circumstances beyond the employee's control and without the appearance of attempting to circumvent the prohibitions in this section, such as acquisition by inheritance, gift, or merger, acquisition or other change in corporate ownership, provided that: (1) The employee makes full, written disclosure to the designated agency ethics official within 30 days after the security is acquired or the employment is commenced; and

(2) The employee is disqualified from participating in any decision, examination, audit, or other particular matter having a direct and predictable effect on such company or other person, in which the employee holds a direct or indirect interest.

(B) The securities result from a stock split, stock dividend or the exercise of preemptive rights arising out of securities permitted by paragraph (b)(2)(i)(A) of this section. This paragraph does not permit the holding of stocks purchased through voluntary reinvestment of cash dividends.

(ii) For purposes of this section, the term "securities" includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a

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trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(c) *Divestiture.* The designated agency ethics official may require an employee to divest a security the employee is otherwise authorized to retain under paragraph (b)(2) of this section, based on a determination of substantial conflict under § 2635.403(b) of this title.

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

§ 8401.103 Prior approval for outside employment.

(a) *Prior approval requirement.* (1) Before engaging in any outside employment, whether or not for compensation, a Commission employee who is classified at GS-13 or above, as well as a Commission attorney at any grade level, must obtain the written approval of the employee's immediate supervisor and the designated agency ethics official. This requirement does not

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apply to a special Government employee of the Commission.

(2) Requests for approval shall be forwarded through the employee's immediate supervisor to the designated agency ethics official and shall include at a minimum the name of the person, group, or organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment.

(b) *Standard for approval.* Approval shall be granted only upon a determination that outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR 2635 and this part.

(c) *Definitions.* For purposes of this section:

(1) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee or teacher. It also includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement expenses.

(2) *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1).

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