

Department of Labor

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must obtain the written approval of the Inspector General or the Inspector General's designee.

(2) *Submission of requests for approval.*

(i) Requests for approval shall be submitted in writing to the Inspector General or the Inspector General's designee. Such requests shall include, at a minimum, the following:

(A) The employee's name and position title;

(B) The name and address of the person, group, or organization for whom the employee proposes to engage in outside employment; and

(C) A description of the proposed outside employment, including the duties and services to be performed while engaged in the outside employment, and the approximate dates of the outside employment.

(ii) Together with the employee's request for approval, the employee shall provide a certification that:

(A) The outside employment will not depend in any way on nonpublic information, as defined at 5 CFR 2635.703(b);

(B) No official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment; and

(C) The employee has read and is familiar with the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), including subpart H. ("Outside Activities"), and the Department's supplemental standards of ethical conduct set forth in this part.

(iii) Upon a significant change in the nature or scope of the outside employment or in the employee's official position, the employee shall submit a revised request for approval.

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

(4) *Definitions.* For purposes of this section, "employment" means any form of non-Federal employment or any 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, or trustee.

§ 5201.105 Additional rules for Mine Safety and Health Administration employees.

The rules in this section apply to employees of the Mine Safety and Health Administration (MSHA) and are in addition to §§ 5201.101, 5201.102, and 5201.103.

(a) *Prohibited financial interests.* Employees in the MSHA and their spouses and minor children are prohibited from having any financial interests (including compensated employment) in any company or other person engaged in mining activities subject to the Federal Mine Safety and Health Act of 1977 (Mine Safety and Health Act), 30 U.S.C. 801 *et seq.* A company or other person shall be deemed to be engaged in such mining activities if it owns 50 percent or more of the voting securities of another company or other person engaged in such mining activities. A company or other person shall not be deemed to be engaged in such mining activities solely because it is controlled by a company or other person which does engage in such activities.

(b) *Exceptions.* (1) Nothing in this section prohibits an employee or the spouse or minor child of an employee from acquiring, owning or controlling an interest in a publicly traded or publicly available investment fund provided that, upon initial or subsequent investment by the employee (excluding ordinary dividend reinvestment), the fund does not have invested, or does not indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of a company or other person engaged in mining activities subject to the Mine Safety and Health Act, and the employee, spouse, or minor child neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(2) Nothing in this section prohibits an employee or the spouse or minor

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child of an employee from having a financial interest in a pension administered by, or which invests in, a company or other person engaged in mining activities subject to the Mine Safety and Health Act.

Example: A mine inspector who was a former employee of mining company X could continue to participate in mine company X's pension plan without violating this section. However, he would have to disclose the interest on his financial disclosure report. Additionally, the inspector should not inspect or otherwise take official action on a matter affecting mine company X without checking with his ethics advisor to ensure that performance of his official duties would not violate the conflict of interest statute (18 U.S.C. 208) or any other ethics provisions.

(c) *Waiver.* (1) The Assistant Secretary of labor for Mine Safety and Health or the Assistant Secretary's designee may grant an employee a written waiver from the prohibitions contained in paragraph (a) of this section, based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or to ensure confidence in the impartiality and objectivity with which Mine Safety and Health Administration programs are administered.

(2) The Assistant Secretary or the designee shall grant a waiver from the prohibitions in paragraph (a) of this

section regarding spouses and minor children unless the Assistant Secretary or the designee determines that the covered relationship or interest is likely to be inconsistent with 5 CFR part 2635 or is otherwise prohibited by law.

(3) A waiver under this section may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. A waiver may be withdrawn if it is later determined that such waiver does not meet the requirements for the granting of waivers under this paragraph. Notwithstanding the grant of any waiver, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(4) Factors which may be considered in connection with the granting or denial of waivers include the nature and extent of the financial interest, and the official position and duties of the employee.

(d) *Pre-existing interests.* Notwithstanding paragraph (a) of this section, an employee of the Mine Safety and Health Administration, and a spouse or minor child of such an employee, may retain financial interests otherwise prohibited by paragraph (a) of this section which were approved in writing under procedures in effect before the effective date of this section, unless the approval is withdrawn, subject to the standards applicable to the withdrawal of waivers under paragraph (c) of this section.