

DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE MANUAL

TRANSMITTAL SHEET

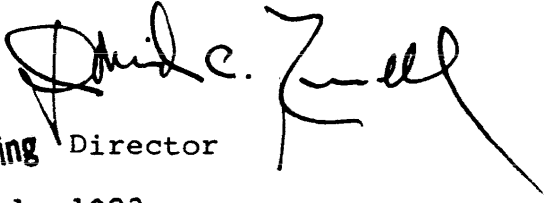
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SUBJECT: Administrative Series
Part 735 Employee Responsibilities and Conduct
Chapter 2 Conflict of Financial Interest

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter establishes policy and guidelines for the Minerals Management Service (MMS) regarding employee restrictions on private financial and other interests.


Acting Director

EFFECTIVE DATE: October 1, 1983

FILING INSTRUCTIONS:

REMOVE:

None

INSERT:

<u>Part</u>	<u>Chapter</u>	<u>Pages</u>	<u>Release</u>
735	2	1-6	14

OPR: Ethics Staff
Personnel Division
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Subchapter 2. Conflict of Financial Interest

1. Purpose. This chapter establishes policy and guidelines for the Minerals Management Service (MMS) regarding employee restrictions on private financial and other interests.

2. Authority.

- A. Executive Order 11222.
- B. 18 U.S.C. 208.
- C. 43 U.S.C. 31(a).
- D. 43 CFR 20.735-21(c), 22(b), 22(c)(3), and 24(d)(6).

3. Definition.

A. Conflict means a situation where:

(1) an employee's public duty is or will be affected by his or her financial interest; or

(2) an employee's financial interest is or will be affected by decisions he or she makes or operations in which he or she is involved in an official capacity.

B. Apparent Conflict means a situation where a member of the public would have reasonable cause to believe that an employee may be in conflict, even though he or she might not be. It is not necessary for an employee to have actually taken a Government action related to private financial interests for there to be an apparent conflict.

C. Direct Interest means any ownership or part ownership by an employee in his or her own name of lands, stocks, bonds, or other holdings. Direct interest also includes:

(1) membership or outside employment in a firm,

(2) ownership of stock or other securities in a corporation which has, directly or through a subsidiary, business related to the employee's duties.

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D. Indirect Interest means any ownership or part ownership of a financial interest by an employee in the name of another where the employee still reaps the benefits. Indirect interest includes:

- (1) partnership agreements,
- (2) sole proprietary or personal relationships where the employee still reaps the benefits,
- (3) substantial holdings of a spouse or dependent child, and
- (4) substantial holdings of other relatives who live in the employee's personal residence.

E. Substantially or Substantial means having a significant relationship between either:

- (1) the dollar value of the financial interest and the employee's specific official duties, or
- (2) the dollar value of the financial interest and the employee's general position within the Department. Substantiality is not measured in percentage of ownership.

F. Relative means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, halfbrother, halvesister, or who is the grandfather or grandmother of the spouse of the reporting individual. It shall also be deemed to include the fiance or fiancée of the reporting individual.

4. Background. The MMS is a Bureau-level organization dedicated to improved management of the Nation's resources. The mission of this organization is to ensure that royalties for the resources are fully and fairly collected; that a systematic management program for clearly defining those tasks which are rightly industry's responsibility is developed; that industry's performance is monitored to ensure that they are meeting their obligations for royalty collection; that resource evaluation, environmental review, leasing activities (including public liaison and planning functions), lease management, and

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inspection and enforcement for the Outer Continental Shelf lands under the MMS's jurisdiction are carried out; and, finally, that meaningful penalties for false statements, gross errors, variations of regulations, and royalty underpayment or nonpayment are imposed. The sensitive nature of this mission renders it imperative that the MMS employees conduct themselves in a manner which is above reproach.

5. Organic Act Prohibitions. The provisions of 43 U.S.C. 31(a), U.S. Geological Survey Organic Act, have been extended to all the MMS employees under 43 CFR 20.735-22(c)(3). This Act states in part: "... the Director and members 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 for private parties or corporations"

This has been interpreted by the Office of the Solicitor to mean, in part, that no employee of the MMS may have an interest either directly, as through a federally issued lease on Public Land or a mining claim in a National Park, or indirectly, as through securities issued by a company which holds Federal mineral leases. Public Land is further interpreted to mean those lands whose title is in the United States. This includes all Public Lands acquired, annexed, or otherwise obtained. For purposes of application of the Act, Department regulations restrict this definition of Public Land by substituting the term Federal Land and defining it to mean lands or resources administered or controlled by the Department, including, but not limited to, the Outer Continental Shelf.

This definition prohibits ownership of holdings in companies whose activities involve exploration, development, and/or production of resources commodities on substantial acreages of Federal Lands through a subsidiary, an affiliate or division, or by the parent company itself.

6. Policy. The MMS policy interprets "interest in the land or mineral wealth" to mean holdings in a company would be prohibited to Royalty Management, Administration, and Program Review employees, if that company held Federal leases in excess of:

- A. 100,000 acres of oil or gas producing land
- B. 20,000 acres of mineral producing land.

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Employees in Offshore Minerals Management (Offshore) are prohibited from holdings in ANY company with Federal Offshore leases. There is no prohibition against Offshore employees having financial interests in companies which are strictly onshore.

Holdings in some companies which would normally be prohibited using the above criteria, may be allowed depending on the company's size, diversification, or percentage of profits from operations on Federal Lands and the like. The operations and business of most major oil, gas, and mining companies will not meet these diversification standards (e.g., Exxon, Texaco, Occidental, Standard Oil of Indiana). If the business of a company would be viewed by a reasonable member of the public as not being closely related to the operations of the Department, holdings in the company may be permitted. Also, if the major business of the company is not related to the Department's regulatory responsibilities, a holding in the company may be allowed (e.g., Boeing). Exceptions must be considered on a case-by-case basis.

Holdings in companies with Federal leases which fall below the stated acreage criteria may nevertheless be prohibited in some instances such as where the primary business of the company is dependent on the company's leasing of Federal Lands.

Any company may be prohibited where there is a direct connection between the company and the employee's official duties or where the potential for an appearance of conflict of interest exists.

7. Appearance of Conflict of Interest.

A. Mineral Royalties and Overriding Royalty Interest.

Royalties do not constitute equity interest in a company. However, to eliminate any possibility of the appearance of conflict of interest in the case of mineral rights on private lands that have been leased, all the MMS employees are limited in the dollar amount of \$5,000 per company and \$15,000 in the aggregate in royalties they may collect in any calendar year. Permitting access to land for mineral exploration and development (i.e., leasing rights to the land) is not subject to the restraints of the policy. In general, the holding of overriding royalty interests is not considered to be in conflict with the MMS policy. This determination can be overridden if the employee has responsibilities officially relating to the company involved.

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B. International Companies. Activities of international companies, headquartered outside the United States but carrying out commodity extraction activities in the United States, are also considered as subject to the policy.

C. Specific Job Functions. Departmental policy is based on Executive Order 11222 and is set forth in 43 CFR 20.735.21(c) which states "No employee shall:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her Government duties and responsibilities.

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her Government employment."

The MMS policy in applying these regulations to financial interests is that conflict and appearance must be judged on the basis of both the employee's specific job functions and the MMS's programs as viewed by a reasonable member of the public. A conflict may occur when an employee, spouse, or dependent child's financial holding may bias the judgments and decisions the employee makes for the Government. Conflict would occur when an employee's duties permit him or her the opportunity for personal gain by enhancing existing financial interests, either through an official action taken or through knowledge gained as a result of his or her MMS employment.

8. Additional Prohibitions. While there are many holdings which do not constitute a conflict of interest as defined by the MMS policy, ownership of such holdings by certain employees of the MMS would create the appearance of conflict of interest because of the public's view of an employee's responsibilities. This is especially true if the employee is involved in his or her official capacity with that company.

9. Interest of Spouses and Dependent Children. Both the U.S. Geological Survey Organic Act (43 U.S.C. 31(a)) and the Department's regulations implementing the Organic Act (43 CFR 20.735-24(b)) are directed to the employee without reference to the employee's spouse or dependent children. Therefore, the policy of the MMS is that the Organic Act prohibitions apply only to the employee. However, it is not acceptable to defeat the purpose of the Act by placing ownership in the spouse's name or the name of another, where the employee still reaps the benefit, merely to avoid the violation. If the employee, as the beneficial owner, purchased the stock for the

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spouse or provided advice or special knowledge obtained on the job in the decision to purchase the stock, the spouse's holding may violate the Act. Other conflict of interest statutes (18 U.S.C. 208 and Executive Order 11222) apply to the holdings of a spouse, dependent children, and others associated with the employee, and the Department regulations incorporate these provisions. In cases where an employee's holdings would be in conflict with his or her position or give the appearance of a conflict of interest, holdings by the spouse or dependent children are also prohibited.

The employee may not be shown as a coowner with a spouse or child in the conflicting interest for any purpose.

10. Responsibility. The Director, Minerals Management Service, as Ethics Counselor, is authorized to approve exceptions to the MMS conflict of financial interest policy for cause on an individual basis.

11. Effective Date. This policy is effective October 1, 1983.