

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1705
RESTRICTION ON FINANCIAL INTERESTS OF STATE EMPLOYEES

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AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (225 ILCS 720).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; codified at 8 Ill. Reg. 16434; amended at 11 Ill. Reg. 8452, effective July 1, 1987; amended at 17 Ill. Reg. 11031, effective July 1, 1993; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 22 Ill. Reg. 7712.

Section 1705.2 Objectives

The objectives of this Part are:

- a) To ensure, as required by Section 9.06 of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1985, ch. 96 1/2, par. 7909.06) (State Act), that each employee does not have a direct or indirect financial interest in any surface coal mining operation.
- b) To define the Director's monitoring, enforcing, and reporting responsibilities pursuant to Section 9.06 of the State Act.

(Source: Amended at 11 Ill. Reg. 8452, effective July 1, 1987)

Section 1705.3 Authority (Repealed)

(Source: Repealed at 11 Ill. Reg. 8452, effective July 1, 1987)

Section 1705.4 Responsibility

- a) The Illinois Department of Natural Resources(Department) shall:
 - 1) Provide guidance to all employees required to file statements pursuant to Section 1705.11;
 - 2) Promptly review the statements of employment and financial interests and supplements, if any, filed to determine if the employee has correctly identified interests constituting a direct or indirect financial interest in a surface coal mining operation;
 - 3) Resolve prohibited financial interest situations by remedial action or by reporting the violations to the Office of Surface Mining Reclamation and Enforcement.
 - 4) Certify on each financial statement that:
 - A) The Department reviewed the financial statement;
 - B) Any prohibited financial interests have been resolved; and
 - C) The State identifies no other prohibited interests.
 - 5) Submit to the Office of Surface Mining Reclamation and Enforcement requested statistics and information to enable preparation of the required annual report to Congress;
 - 6) Submit to the Office of Surface Mining Reclamation and Enforcement the initial listing and subsequent annual listings of positions which Section 1705.11(b), (c), and (d) require;
 - 7) Furnish a blank statement forty-five (45) days in advance of the filing date which Section 1705.13(a) establishes to each employee required to file a statement; and
 - 8) Inform annually each employee required to file a statement with the Director of the name, address, and telephone number of the person whom the employee may contact for advice and counseling.

- b) Employees shall:
 - 1) Not have any direct or indirect financial interest in surface coal mining operations;
 - 2) File a fully completed statement of employment and financial interest:
 - A) Upon being hired, and
 - B) Annually thereafter by the date specified in Section 1705.13(a); and
 - 3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

(Source: Amended at 11 Ill. Reg. 8452, effective July 1, 1987)

Section 1705.6 Penalties

- a) Section 9.06 of the State Act prohibits each employee of the Department who performs any function or duty under the State Act from having a direct or indirect financial interest in any surface coal mining operation. The State Act provides that whoever knowingly violates the provisions of Section 9.06 shall, upon conviction, be punished by a fine of not more than two thousand, five hundred dollars (\$2,500), or by imprisonment of not more than one (1) year, or by both.
- b) An employee who fails to file the required statement will be considered in violation of Section 9.06 of the State Act and will be subject to discharge or suspension pursuant to 80 Ill. Adm. Code 1.

(Source: Amended at 11 Ill. Reg. 8452, effective July 1, 1987)

Section 1705.11 Who Shall File

- a) Any employee who performs any function or duty under the State Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Director not to involve performance of any function or duty under the Act or who is no longer employed by the Department at the time a filing is due, is not required to file a statement.
- b) The Director shall prepare a list of positions within Illinois state government that involve performance of any functions or duties under the State Act. Only those

persons who occupy a listed position will be subject to the filing requirements of Section 517(g) of the Surface Mining Control and Reclamation Act of 1977 (the Federal Act) (30 U.S.C. 1201 et seq.).

- c) The Director shall prepare and submit to the Federal Director, an initial listing of positions that do not involve performance of any functions or duties under the Act within sixty (60) days of the effective date of these regulations.
- d) The Director shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Federal Director and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the Federal Director by no later than September 30 of each year. The Director may revise the listing of positions at any time the Director determines such revisions are required to carry out the purpose of the law or the purposes of Part 1705. Revisions in the listing of positions are effective upon notification to the holder of the positions added to or deleted from the list.

(Source: Amended at 11 Ill. Reg. 8452, effective July 1, 1987)

Section 1705.13 When to File

- a) Employees shall file annually on February 1 of each year, or at such other date as the Director of the Office of Surface Mining Reclamation and Enforcement may direct.
- b) A new employee will be required to file upon becoming an employee.
- c) An employee who has filed a statement pursuant to subsection (b) is not required to file a statement pursuant to subsection (a) if the employee filed a statement pursuant to subsection (b) after December 1, but before February 1 of the following year.

(Source: Amended at 11 Ill. Reg. 8452, effective July 1, 1987)

Section 1705.15 Where to File

The Director shall file his or her statement with the Federal Director. All other employees, as provided in Section 1705.11, shall file their statement with the legal counsel to the Department.

(Source: Amended at 11 Ill. Reg. 8452, effective July 1, 1987)

Section 1705.17 What to Report

- a) Each employee shall report, on OSM Form 23, all employment and financial interests of the employee, the employee's spouse, minor children, or other relatives who are fulltime residents of the employee's home.
- b) Listing of all financial interests. The employee is to answer the questions on OSM Form 23 as follows:
 - 1) Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary, or other income arrangement as a result of prior or current employment. Retirement income is exempt from reporting if the Department's actions will not affect the amount of income to the employee, his or her spouse, or other resident relative. The employee is exempt from reporting any income from a retirement plan in which the income will be unaffected by the Department's actions.
 - 2) Securities. Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities, or other arrangements including trusts. An employee is exempt from reporting holdings in widely diversified mutual funds, investment clubs, or regulated investment companies not specializing in surface coal mining operations.
 - 3) Real property. Any ownership, lease, royalty, or other interest or rights in surface or mineral estates. An employee is exempt from reporting any land occupied as a personal resident.
 - 4) Creditors. Any debts owed to business entities or nonprofit organizations which directly earn income from surface coal mining operations.
- c) Employee certifications, and, if applicable, a listing of exceptions.
 - 1) The employee must certify, to the best of the employee's knowledge, that:
 - A) None of the listed financial interests represent an interest in a surface coal mining operation unless the employee has specifically identified and described, on the certificate, the interest as exempted; and
 - B) The information shown on the statement is true and complete.

- 2) The Department expects each employee to:
 - A) Have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship or partnership, his or her outside employment and the outside employment of the spouse and other covered relatives; and
 - B) Be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.
- 3) The exceptions in OSM Form 23 should provide enough information for the Department's legal counsel to determine whether a direct or indirect financial interest exists. Accordingly, the exceptions should:
 - A) List the financial interests;
 - B) Show the number of shares, estimated value, or annual income of the financial interests; and
 - C) Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.
- 4) The employee's failure to list any prohibited financial interest may be cause for imposing the penalties prescribed in Section 1705.6(a).

(Source: Amended at 11 Ill. Reg. 8452, effective July 1, 1987)

Section 1705.18 Gifts and Gratuities

- a) Except as provided in subsection (b), employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a company which conducts or is seeking to conduct surface coal mining operations.
- b) The prohibitions in subsection (a) do not apply in the context of family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

- 1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and
- 2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.
- c) Employees found guilty of violating the provisions of this Section will be disciplined pursuant to 80 Ill. Adm. Code 1.

(Source: Amended at 11 Ill. Reg. 8452, effective July 1, 1987)

Section 1705.19 Resolving Prohibited Interests

Actions to be taken by the Director:

- a) Remedial action to effect resolution. If an employee has a prohibited financial interest, the Director shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within ninety (90) days.
- b) The Director shall take one or more of the following remedial actions:
 - 1) Reassignment of the employee to a position which performs no function or duty under the State Act;
 - 2) Requiring the employee's divestiture of the prohibited financial interest; or
 - 3) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

(Source: Amended at 11 Ill. Reg. 8452, effective July 1, 1987)

Section 1705.21 Appeals Procedures

Any employee who is dissatisfied with the Director's decision may file an appeal within thirty (30) days after the Department mails the Director's decision to the employee. The Department shall hold a hearing in accordance with the procedures outlined in 62 Ill. Adm. Code 1847.3.

(Source: Amended at 17 Ill. Reg. 11031, effective July 1, 1993)