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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 185

RIN 3206-AF43

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: Office of Personnel Management.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations which were published on Friday, February 10, 1995, (60 FR 7891). The regulations provide procedures to implement the Program Fraud Civil Remedies Act of 1986.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606-1980.

SUPPLEMENTARY INFORMATION: On February 10, 1995, OPM published final regulations to implement the Program Fraud Civil Remedies Act of 1986. On April 12, 1995, OPM was advised by an official from the West Publishing Company that a typographical error had resulted in the omission of a portion of one of the sections. This document corrects that omission.

Correction

In rule document 95-3347 beginning on page 7891 in the issue of Friday, February 10, 1995, make the following correction:

On page 7899, in the second column, correct § 185.139(g) to read as follows:

§ 185.139 Appeal to authority head.

* * * * *

(g) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless the objecting party can demonstrate extraordinary

circumstances causing the failure to raise the objection.

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Office of Personnel Management.

Lorraine A. Green,
Deputy Director.

[FR Doc. 95-11075 Filed 5-4-95; 8:45 am]

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DEPARTMENT OF THE TREASURY

5 CFR Chapter XXI

RIN 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Department), with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule establishing uniform supplemental standards of ethical conduct for the officers and employees of the Department. The final rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to the Department. The final rule is effective upon publication and establishes regulations relating to: The designation of agency components for purposes of the rules concerning gifts and teaching, speaking and writing; prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; prohibitions on recommendations concerning certain securities and services of certain types of professionals; limitations on purchases of assets controlled by the Department or related to Department operations; and restrictions on outside employment and business activities.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen J. McHale, Henry H. Booth, or R. Peter Rittling, Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, telephone (202) 622-0450, FAX (202) 622-1176, e-mail Peter.Rittling@treas.sprint.com.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

On Tuesday August 3, 1993, the Department, with OGE's concurrence, published for comment a proposed rule to establish supplemental standards of ethical conduct for all Treasury Department employees (58 FR 41193-41203). The proposed rule was intended to supplement the Standards of Ethical Conduct for Employees of the Executive Branch published by OGE on August 7, 1992, and effective February 3, 1993 (5 CFR Part 2635; see also the grace period extensions at 59 FR 4779-4780, Feb. 2, 1994, and 60 FR 6390-6391, Feb. 2, 1995). The proposed rule was issued pursuant to 5 CFR 2635.105, which authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Department, with OGE's concurrence, determined that the supplemental regulations contained in the proposed rule were necessary to implement the Department's ethics program successfully, considering the Department's unique programs and operations.

The proposed rule prescribed a 30-day comment period and invited comments from all interested parties. The Department received timely comments from six sources, considered each comment carefully, and made appropriate modifications to the rule. The Department, with OGE's concurrence, is now publishing as a final rule the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury, to be codified at a new part 3101, Title 5 of the Code of Federal Regulations.

In a separate rule making, the Department is issuing as an interim rule the Department of the Treasury Employee Rules of Conduct. The Rules of Conduct will be codified at 31 CFR Part 0 and will prescribe Department-specific employee rules of conduct and procedure.

II. Summary of the Comments

The Department received comments from two Department employees, two private financial institutions and two bureaus of the Department. The comments, discussed more fully below, fall into two general categories. The comments received from the Department employees and the financial

institutions asked for guidance on the application of either the rule in general or a specific section of the rule. The bureaus' comments recommended substantive changes to certain sections of the rule that applied specifically to their employees. After the comment period closed, certain offices in the Department requested changes to § 3101.103 to make it more restrictive and to increase its coverage to include an employee's spouse and minor children. The suggested changes are being reviewed and may be implemented in the future by amending the rule. At this time, however, this section applies only to Department employees.

III. Analysis of the Comments

One Department employee asked whether the final rule will apply retroactively. The employee was concerned that the final rule, once effective, would be used to discipline employees for actions taken before the effective date of the final rule. The final rule applies prospectively only.

Another Department employee asked whether § 3101.103, which prohibits Department employees from purchasing, either directly or indirectly, certain Government owned or controlled property, would apply to the relatives and friends of Department employees. Section 3101.103 applies only to Department employees. However, a Department employee may not circumvent the prohibition by having a friend or relative purchase property for the employee's use or possession that the employee would otherwise be prohibited from purchasing. This is considered an indirect purchase and is prohibited by § 3101.103.

Two private financial institutions submitted comments asking whether the final rule will apply to the employees of private financial institutions. As stated in the Summary section of the proposed rule, the regulations will apply only to the officers and employees of the Department of the Treasury, with specific provisions also applicable to certain members of their families. This has not been changed; therefore, the final rule does not apply to private financial institutions or their employees.

Finally, two bureaus of the Department, the OCC and the OTS, submitted comments recommending substantive changes to specific sections of the rule that will apply exclusively to their employees. All changes were incorporated into the final rule. In general, many of the regulations specific to OTS and OCC employees included in this rule are based on old OCC and OTS

conduct regulations which predate and were displaced by the Executive Branch-wide Standards. These changes fixed inconsistencies between the new regulations and the old regulations on which they are based.

The first change we made was to § 3101.109(c)(3)(iii). Section 3101.109(c)(3)(iii) prescribes an exception to the OTS borrowing prohibition contained in § 3101.109(c). As proposed, the exception would have permitted an OTS employee to obtain a loan or extension of credit by assuming a mortgage loan on a personal residence without first obtaining approval from the bureau. In the final rule, the exception is retained but modified to require the employee to obtain the prior approval of the Chief Counsel, a Regional Director, Regional Deputy Director, or designee before securing a loan or extension of credit under this exception.

We also revised § 3101.109(c)(4). As proposed, § 3101.109(c)(4) would have permitted covered OTS employees, their spouses and minor children, to retain preexisting credit in only three specific situations. In the final rule, § 3101.109(c)(4) is revised to permit the retention of preexisting credit in a fourth situation. As modified, a covered employee, or a spouse or a minor child, may retain preexisting credit if the credit was extended before April 30, 1991, the date on which the borrowing prohibition included in § 3101.109(c) was first implemented in the old OTS conduct rules. This final rule continues the OTS borrowing prohibition; therefore, it is necessary to include the exception for preexisting credit obtained before April 30, 1991, the date that the prohibition originally took effect.

In the proposed rule, the prohibition on the purchase of assets in § 3101.109(f), applied to all OTS employees, their spouses and minor children. In the final rule, the prohibition in § 3101.109(f) was modified to apply only to "covered" OTS employees, their spouses and minor children. The reason for the modification was to make § 3101.109(f) consistent with a similar prohibition contained in the old OTS conduct rules. The term covered OTS employee is defined in § 3101.109(a).

In a joint comment, both the OTS and the OCC recommended changing certain language in the exception to the prohibitions against owning certain financial interests. All recommended changes were incorporated into the final rule.

Under §§ 3101.108(a) and 3101.109(b) of the final rule, OCC employees and covered OTS employees are prohibited

from owning the securities of entities regulated by their respective bureaus. However, under §§ 3101.108(a)(3)(i) and 3101.109(b)(3)(i), which are nearly the same for the OCC and the OTS, an OCC or covered OTS employee may invest in a publicly traded or publicly available "mutual fund or other collective investment fund or in a widely held pension or similar fund" if the fund does not invest more than "25 percent" of its "assets" in the securities of "one or more" regulated entities.

In general, the revised exception describes in greater detail the types of funds in which an employee is permitted to invest. In the proposed rule, the exception was limited to "publicly traded or publicly available investment fund[s]." Now, under the modified exception, a covered employee may invest in a "publicly traded or publicly available mutual fund or other collective investment fund," including a registered investment company like a money market fund, unit investment trust, or other publicly traded or publicly available pooled investment fund, or a "widely held pension or similar fund," such as a deferred compensation plan administered by a corporation for its employees.

Additionally, the effect of the exception, as revised, is to prohibit an employee from investing in a fund that invests more than 25 percent of its assets in the securities of one or more regulated entities. This modification simplifies the restriction contained in the proposed rule that would have prohibited an employee from investing in a fund that invested more than 5 percent of its assets in the securities of one regulated entity or more than 20 percent of its assets in the securities of a regulated industry. The 25 percent limitation is based upon current security law and policy, including the definition of a diversified management company and the investment industry concentration limit contained in §§ 5(b) and 8(b), respectively, of the Investment Company Act of 1940 (15 U.S.C. 80a-5(b), 80a-8(b)). Overall, the changes to §§ 3101.108(a) and 3101.109(b)(3) will clarify the standards employees must follow in making personal investments.

IV. Change in the Final Rule

Section 3101.102 lists the components of the Department that are designated as separate agencies for the purposes of the regulations contained in 5 CFR 2635.807 and subpart B of 5 CFR Part 2635. The United States Savings Bonds Division, which was listed as a separate agency in the proposed rule, is deleted from the list in the final rule because it was assumed into the Bureau of the Public

Debt after the proposed rule was published.

Consistent with the additional grace period extensions at 59 FR 4779-4780 and 60 FR 6390-6391, § 3101.111 has been modified to grandfather until no later than January 3, 1996, the Secret Service rules prohibiting certain kinds of outside employment.

V. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

This rule is limited to agency organization, management and personnel matters; therefore, it is not subject to Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

List of Subjects in 5 CFR Part 3101

Conflict of interests, Government employees.

Dated: January 29, 1995.

Edward S. Knight,

General Counsel, Department of the Treasury.

Approved: February 28, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of the Treasury, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter XXI, consisting of part 3101, to read as follows:

CHAPTER XXI—DEPARTMENT OF THE TREASURY

PART 3101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY

Sec.

- 3101.101 General.
- 3101.102 Designation of separate agency components.
- 3101.103 Prohibition on purchase of certain assets.
- 3101.104 Outside employment.
- 3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.
- 3101.106 Additional rules for Internal Revenue Service employees.
- 3101.107 Additional rules for Legal Division employees.
- 3101.108 Additional rules for Office of the Comptroller of the Currency employees.
- 3101.109 Additional rules for Office of Thrift Supervision employees.

3101.110 Additional rules for United States Customs Service employees.

3101.111 Additional rules for United States Secret Service employees.

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 7214(b); 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, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

§ 3101.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Treasury and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section. Department employees are also subject to any additional rules of conduct that the Department or their employing bureaus are authorized to issue. See 31 CFR part 0, Department of the Treasury Employee Rules of Conduct.

(b) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official (DAEO), bureaus of the Department of the Treasury are authorized to issue instructions or manual issuances providing explanatory guidance and establishing procedures necessary to implement this part and part 2635 of this title. See 5 CFR 2635.105(c).

(c) *Definition of "agency designee".* As used in this part and in part 2635 of this title, the term "agency designee" refers to any employee who has been delegated authority by an instruction or manual issuance issued by a bureau under paragraph (b) of this section to make a determination, give an approval, or take other action required or permitted by this part or part 2635 of this title with respect to another employee. See 5 CFR 2635.102(b).

§ 3101.102 Designation of separate agency components.

Pursuant to 5 CFR 2635.203(a), each of the following components of the Department of the Treasury is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking or writing:

- (a) Bureau of Alcohol, Tobacco and Firearms (ATF);
- (b) Bureau of Engraving and Printing;
- (c) Bureau of the Public Debt;
- (d) Federal Law Enforcement Training Center;

- (e) Financial Management Service;
- (f) Internal Revenue Service (IRS);
- (g) Office of the Comptroller of the Currency (OCC);
- (h) Office of the Inspector General;
- (i) Office of Thrift Supervision (OTS);
- (j) United States Customs Service (USCS);
- (k) United States Mint; and
- (l) United States Secret Service.

For purposes of this section, employees in the Legal Division shall be considered to be part of the bureaus or offices in which they serve.

Note: As a result of the designations contained in this section, employees of the remaining parts of the Department of the Treasury (e.g., employees in Departmental Offices, including the Financial Crimes Enforcement Network) will also be treated as employees of an agency that is separate from all of the above listed bureaus and offices for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying an employee's "agency" under 5 CFR 2635.807 governing teaching, speaking and writing.

§ 3101.103 Prohibition on purchase of certain assets.

(a) *General prohibition.* Except as provided in paragraph (b) of this section, no employee of the Department of the Treasury shall purchase, directly or indirectly, property:

- (1) Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or
- (2) Sold under the direction or incident to the functions of the employee's bureau.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the purchase of Government securities or items sold generally to the public at fixed prices, such as numismatic items produced by the United States Mint or foreign gifts deposited with the Department pursuant to 5 U.S.C. 7342 that an employee may purchase pursuant to 41 CFR part 101-49.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel. Such a waiver may be granted only on a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee has used his or her official position or inside information to obtain an

advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

Note: Employees of the OCC and OTS are subject to additional limitations on the purchase of assets that are set out in bureau-specific rules contained in §§ 3101.108 and 3101.109.

§ 3101.104 Outside employment.

(a) *General requirement for prior approval.* All Department of the Treasury employees shall obtain prior written approval before engaging in any outside employment or business activities, with or without compensation, except to the extent that the employing bureau issues an instruction or manual issuance pursuant to paragraph (b) of this section exempting an activity or class of activities from this requirement. Approval shall be granted only on a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title, or any provision of this part.

Note: Employees of the ATF, IRS, Legal Division, OCC, USCS and United States Secret Service are subject to additional limitations on outside employment and activities that are set out in bureau-specific rules contained in this part.

(b) *Bureau responsibilities.* Each bureau, which for the purposes of this section includes the Departmental Offices and the Office of the Inspector General, shall issue instructions or manual issuances governing the submission of requests for approval of outside employment or business activities and designating appropriate officials to act on such requests. The instructions or manual issuances may exempt categories of employment or activities from the prior approval requirement based on a determination that employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute, part 2635 of this title or any provision of this part. Bureaus may include in their instructions or issuances examples of outside employment or activities that are permissible or impermissible consistent with this part and part 2635 of this title. Bureaus shall retain in employees' Official Personnel Folders (temporary side) all requests for approval whether granted or denied.

§ 3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.

The following rules apply to the employees of the Bureau of Alcohol, Tobacco and Firearms and are in addition to §§ 3101.101 through 3101.104:

(a) *Prohibited financial interests.* Except as provided in this section, no employee of the ATF, or spouse or minor child of an ATF employee, shall have, directly or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms or explosives industries. The term financial interest is defined in § 2635.403(c) of this title.

(b) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, may grant a written waiver of the prohibition in paragraph (a) of this section on a determination that the financial interest is not prohibited by 26 U.S.C. 7214(b) and that, in the mind of a reasonable person with knowledge of the particular circumstances, the financial interest will not create an appearance of misuse of position or loss of impartiality, or call into question the impartiality and objectivity with which the ATF's programs are administered. A waiver under this paragraph may require appropriate conditions, such as execution of a written disqualification.

§ 3101.106 Additional rules for Internal Revenue Service employees.

The following rules apply to the employees of the Internal Revenue Service and are in addition to §§ 3101.101 through 3101.104:

(a) *Prohibited recommendations.* Employees of the IRS shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant, or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS.

(b) *Prohibited outside employment.* Involvement by an employee of the IRS in the following types of outside employment or business activities is prohibited and shall constitute a conflict with the employee's official duties pursuant to 5 CFR 2635.802:

(1) Performance of legal services involving Federal, State or local tax matters;

(2) Appearing on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter except on written authorization of the Commissioner of Internal Revenue;

(3) Engaging in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters;

(4) Engaging in bookkeeping, the recording of transactions, or the record-making phase of accounting, when such activity is directly related to a tax determination; and

(5) Engaging in the preparation of tax returns for compensation, gift, or favor.

(c) *Seasonal employees.* Seasonal employees of the IRS while in non-duty status may engage in outside employment or activities other than those prohibited by paragraph (b) of this section without obtaining prior written permission.

§ 3101.107 Additional rules for Legal Division employees.

The following rules apply to the employees of the Legal Division and are in addition to §§ 3101.101 through 3101.104:

(a) *Application of rules of other bureaus.* In addition to the rule contained in paragraph (b) of this section, employees in the Legal Division shall be covered by the rules contained in this part that are applicable to employees of the bureaus or offices in which the Legal Division employees serve, subject to any instructions which the General Counsel or appropriate Chief or Legal Counsel may issue in accordance with § 3101.101(b).

(b) *Prohibited outside employment.* Pursuant to 5 CFR 2635.802, it is prohibited and shall constitute a conflict with the employee's official duties for an attorney employed in the Legal Division to engage in the outside practice of law that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Department of the Treasury which is the client to whom the attorney owes a professional responsibility; or

(2) Interpret any statute, regulation or rule administered or issued by the Department.

§ 3101.108 Additional rules for Office of the Comptroller of the Currency employees.

The following rules apply to the employees of the Office of the Comptroller of the Currency and are in addition to §§ 3101.101–3101.104:

(a) *Prohibited financial interests—(1) Prohibition.* Except as provided in paragraphs (a)(3) and (g) of this section, no OCC employee, or spouse or minor child of an OCC employee, shall own, directly or indirectly, securities of any commercial bank (including both national and State-chartered banks) or commercial bank affiliate, including a bank holding company.

(2) *Definition of "securities".* For purposes of paragraphs (a)(1) and (a)(3) 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 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.

(3) *Exceptions.* Nothing in this section prohibits an OCC employee, or spouse or minor child of an OCC employee, from:

(i) Investing in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund provided that the fund does not invest more than 25 percent of its assets in securities of one or more commercial banks (including both national and State-chartered banks) and commercial bank affiliates (including bank holding companies) and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in the publicly traded securities of a holding company of a nonbank bank or of a retailing firm that owns or sponsors a credit card bank as defined by the Competitive Equality Banking Act of 1987, except that an employee who owns such an interest must be disqualified from participating in the regulation or supervision of the nonbank bank or the credit card bank;

(iii) Using a commercial bank or commercial bank affiliate as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(b) *Prohibited borrowing*—(1)

Prohibition on employee borrowing. Except as provided in this section, no covered OCC employee shall seek or obtain any loan or extension of credit, including credit obtained through the use of a credit card, from any national bank or from an officer, director, employee, or subsidiary of any national bank.

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (b)(1) of this section shall apply to the spouse or minor child of a covered OCC employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OCC employee does not participate in the negotiation for the loan or serve as co-maker, endorser, or guarantor of the loan.

(3) *Covered OCC employee.* For purposes of the prohibitions on borrowing contained in paragraphs (b)(1) and (b)(2) of this section, "covered OCC employee" means:

(i) An OCC bank examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on borrowing contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(4) *Exceptions.* Nothing in this section prohibits a covered OCC employee, or the spouse or minor child of a covered OCC employee, from obtaining a loan or extension of credit described in paragraphs (b)(4)(i) through (b)(4)(iii) of this section from a national bank if the loan or extension of credit is obtained on terms and conditions no more favorable than those offered to the general public, the employee is not assigned to examine the bank at the time the loan or extension of credit is obtained, and the employee submits to the Chief Counsel or designee a written disqualification from examining or otherwise participating in the supervision of the bank. The exceptions provided by this paragraph are for loans or extensions of credit obtained:

(i) Through use of a credit card issued by a national bank where:

(A) The employee is assigned to a district office and the bank is not headquartered in the employee's district;

(B) The employee is assigned to the Multinational Division and the bank is not supervised by that Division; or

(C) The employee is assigned to the Washington office (other than the Multinational Division);

(ii) Through use of a national bank credit card sponsored by a retailing firm (e.g., Nordstrom, Lord and Taylor, Amoco Oil Company); or

(iii) Through assumption of a mortgage loan on the employee's residence which is liquidated in accordance with its original terms without renewal or renegotiation.

(5) *Pre-existing credit.* This section does not prohibit a covered OCC employee, or spouse or minor child of a covered OCC employee, from retaining a loan from a national bank on its original terms if the loan was incurred prior to employment by the OCC or as a result of the sale or transfer of a loan

to a national bank or the conversion or merger of the lender into a national bank. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibitions in paragraphs (b)(1) and (b)(2) of this section.

(c) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (c)(1) through (c)(7) of this section have securities that an OCC employee would be prohibited from having by paragraph (a) of this section, or loans or extensions of credit that a covered OCC employee would be prohibited from obtaining under paragraph (b) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title, or this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(d) *Prohibited recommendations.* Employees of the OCC shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale or other divestiture of securities of any commercial bank or commercial bank affiliate, including a bank holding company.

(e) *Prohibited purchase of assets.* No employee of the OCC, or spouse or

minor child of an OCC employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a national bank or national bank affiliate, including a bank holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(f) *Outside employment*—(1) *Prohibition on outside employment.* No covered OCC employee shall perform services for compensation for any bank, banking or loan association, or national bank affiliate, or for any officer, director or employee of, or for any person connected in any capacity with a bank, banking or loan association or national bank affiliate.

(2) *Covered OCC employee.* For purposes of the prohibitions on outside employment contained in paragraph (f)(1) of this section, "covered OCC employee" means:

(i) An OCC bank examiner; and
(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on outside employment contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(g) *Waivers.* An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel that the waiver is not inconsistent with part 2635 of this title 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 agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

§ 3101.109 Additional rules for Office of Thrift Supervision employees.

The following rules apply to the employees of the Office of Thrift Supervision and are in addition to §§ 3101.101 through 3101.104:

(a) *Covered OTS employee.* For purposes of this section, the term "covered OTS employee" means:

(1) An OTS examiner;
(2) An employee in a position at OTS grade 17 or above; and

(3) Any other OTS employee specified in an OTS instruction or manual issuance whose duties and responsibilities, as determined by the Director of the OTS or his or her designee, require application of the prohibitions contained in this section to ensure public confidence that the OTS's programs are conducted impartially and objectively.

(b) *Prohibited financial interests*—(1) *Prohibition.* Except as provided in paragraphs (b)(3) and (g) of this section, no covered OTS employee, or spouse or minor child of a covered OTS employee, shall own, directly or indirectly, securities of any OTS-regulated savings association or savings association holding company.

(2) *Definition of "securities".* For purposes of paragraphs (b)(1) and (b)(3) 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 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.

(3) *Exceptions.* Nothing in this section prohibits a covered OTS employee, or spouse or minor child of a covered OTS employee, from:

(i) Investing in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund provided that the fund does not invest more than 25 percent of its assets in securities of one or more OTS-regulated savings associations or savings association holding companies and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in certain non-financial holding companies whose principal business is unrelated to the financial services industry and which are identified as such on a list maintained by the Chief Counsel of the OTS;

(iii) Using a savings association as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(c) *Prohibited borrowing*—(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OTS employee shall seek or obtain any loan or extension of credit, including credit obtained through the use of a credit card, from any OTS-regulated savings association or an officer, director, employee, or subsidiary of any such association.

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (c)(1) of this section shall apply to the spouse or minor child of a covered OTS employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OTS employee does not participate in the negotiation for the loan or serve as co-maker, endorser, or guarantor of the loan.

(3) *Exceptions.* Nothing in this section prohibits a covered OTS employee, or the spouse or minor child of a covered OTS employee, from obtaining a loan or extension of credit described in paragraphs (c)(3)(i) through (c)(3)(iii) of this section from an OTS-regulated savings association if the loan or extension of credit is obtained on terms and conditions no more favorable than those offered to the general public, the employee is not assigned to examine the savings association at the time the loan or extension of credit is obtained, and the employee submits to the Chief Counsel or designee a written disqualification from examining or otherwise participating in the supervision of the savings association. The exceptions provided by this paragraph are for loans or extensions of credit obtained:

(i) Through use of a credit card issued by a savings association where:

(A) The employee is assigned to a regional office and the savings association is not headquartered in the employee's region; or

(B) The employee is assigned to the Washington office;

(ii) Through use of a savings association credit card sponsored by a retailing firm (e.g., Sears); or

(iii) Through assumption of a mortgage loan on the employee's residence which is liquidated in accordance with its original terms without renewal or renegotiation, with prior approval from the Chief Counsel, a Regional Director, Regional Deputy Director or designee.

(4) *Pre-existing credit.* This section does not prohibit a covered OTS

employee, or spouse or minor child of a covered OTS employee, from retaining a loan from an OTS-regulated savings association on its original terms if the loan was incurred prior to April 30, 1991, or employment by the OTS, whichever date is later, or as a result of the sale or transfer of the loan to a savings association or the conversion or merger of the lender into an OTS-regulated savings association. Any renewal or renegotiation of a pre-existing loan or extension of credit is covered by paragraphs (c)(1) and (c)(2) of this section.

(d) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (d)(1) through (d)(7) of this section have securities that a covered OTS employee would be prohibited from having by paragraph (b) of this section, or loans or extensions of credit that a covered OTS employee would be prohibited from obtaining under paragraph (c) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or this part, including an appearance of misuse of position or loss of impartiality. This paragraph (d) applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(e) *Prohibited recommendations.* Employees of the OTS shall not make

recommendations or suggestions, directly or indirectly, concerning the acquisition or sale, or other divestiture of securities of any OTS-regulated savings association or savings association holding company.

(f) *Prohibited purchase of assets.* No covered OTS employee, or spouse or minor child of a covered OTS employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a savings association or savings association affiliate, including a savings association holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(g) *Waivers.* An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel that the waiver is not inconsistent with part 2635 of this title 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 agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

§ 3101.110 Additional rules for United States Customs Service employees.

The following rules apply to the employees of the United States Customs Service and are in addition to §§ 3101.101 through 3101.104:

(a) *Prohibition on outside employment.* No employee of the USCS shall work for a customs broker, international carrier, bonded warehouse, foreign trade zone, cartman, law firm engaged in the practice of customs law or importation department of a business, nor be employed in any private capacity related to the importation or exportation of merchandise.

(b) *Restrictions arising from employment of relatives.* If the spouse of a USCS employee, or other relative who is dependent on or resides with a USCS employee, is employed in a position that the employee would be prohibited from occupying by paragraph (a) of this section, the employee shall file a report of family member employment with his or her supervisor. Supervisors shall forward such reports to the appropriate Regional Counsel for transmittal to the Chief Counsel. The employee shall be disqualified from participation in any

matter involving the relative or the relative's employer unless an agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, authorizes the employee to participate in the matter using the standard in § 2635.502(d) of this title.

§ 3101.111 Additional rules for United States Secret Service employees.

[Reserved]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

[DA-95-13]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule terminates the advertising and promotion provisions of the Eastern Ohio-Western Pennsylvania Federal milk order. Termination of the provisions was requested by several associations of dairy farmers whose milk is pooled under the order. Two comments were filed in response to the proposed termination, and both were in favor of terminating these provisions. Termination eliminates redundant expenses in administering regional advertising and promotion programs without affecting producers' participation.

EFFECTIVE DATE: Amendments 2 and 3 (§§ 1036.73 and 1036.105 through 1036.121) are effective July 1, 1995. Amendment 4 (§ 1036.122) is effective August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Termination: Issued March 21, 1995; published March 24, 1995 (60 FR 15523).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has