

Appendix D to Subpart B of Part 532 [Amended]

3. Appendix D to subpart B is amended for the State of California by removing the two occurrences of "Alameda-Contra Costa" from the area of application, and adding "Santa Clara" as a new nonappropriated fund wage area after "Santa Barbara" to read as follows:

* * * * *

SANTA CLARA

Survey area

California:
Santa Clara

Area of application. Survey area plus:

California:

Alameda
Contra Costa
San Mateo

* * * * *

[FR Doc. 02-17900 Filed 7-16-02; 8:45 am]

BILLING CODE 6325-39-P

Counsel, OCC Legislative and Regulatory Activities Division, (202) 874-5090, 250 E St., SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Supplemental Standards of Ethical Conduct for Employees of the Department of Treasury, at 5 CFR 3101.108, set forth rules that apply to employees of the Office of the Comptroller of the Currency (OCC). This final rule amends § 3101.108(b), which prohibits OCC employees from borrowing, including borrowing through the use of a credit card, from a national bank except under very limited circumstances.

Under 18 U.S.C. 213, a bank examiner is prohibited from accepting loans from a bank that he or she examines; 18 U.S.C. 212 correspondingly prohibits a bank from making a loan to someone who examines or has authority to examine the bank.¹ Current Supplemental Regulations implementing section 213 and expanding upon it generally prohibit examiners and the other "covered" OCC employees from seeking or obtaining any loan or other extension of credit from a national bank, including through the use of a credit card. 5 CFR 3101.108(b).

The existing Supplemental Regulations do contain an exception to this prohibition. A covered OCC employee² generally is permitted to obtain a credit card from a national bank if: (1) The credit card is obtained on terms and conditions no more favorable than those offered to the general public; (2) the employee is not assigned to examine the bank offering the credit card at the time the credit card is obtained; and (3) the employee recuses himself or herself from examining or otherwise participating in the supervision of the bank. Two issues concerning the scope of the exception have arisen since the issuance of the current rules in 1995. See 60 FR 22249-22255.

¹ Under the OCC Ethics Policy, Rules, Policies and Procedures for Employees (October 1999) (OCC Ethics Policy) the term "examiner" does not include supervisory personnel who are not assigned to the examination of banks. The OCC Ethics Policy will be revised to reflect the changes made by this final rule and to clarify that, under 18 U.S.C. 212, "authority to examine" also does not include OCC supervisory personnel. A summary of the OCC Ethics Policy is available on the OCC's website at <http://www.occ.treas.gov/ethics.htm>.

² "Covered" OCC employees include bank examiners and all other employees designated by the Comptroller under OCC ethics policies. See 5 CFR 3101.108(b)(3). Under these policies, "covered employee" means any employee, except an administrative employee, who is required to file financial disclosure reports.

The first issue under the current credit card rules is that employees' credit card-related recusals have limited the flexibility of OCC supervisors to make assignments. The exception to the general prohibition on obtaining credit generally permits covered OCC employees to hold and use national bank credit cards if they recuse themselves from any work involving those banks. See 5 CFR 3101.108(b)(4), as adopted in 1995. In instances where covered OCC employees holding national bank credit cards are involved in OCC licensing, policy and legal staff matters directly involving the bank issuer, the OCC has found that there is little likelihood of a conflict of interest or a loss of impartiality and that the breadth of the restriction unnecessarily hinders the administration of the OCC's programs. Therefore, this final rule refines the application of the credit card rules to covered OCC employees and more closely follows the statutory prohibition.

The second issue is that the current credit card rules have significantly limited the credit card options available to employees who work in district offices and on large bank supervision teams. Under the Supplemental Regulations and the OCC ethics policies (which set forth the procedures that implement the OCC's portion of the Supplemental Regulations), covered district employees may not obtain credit cards from banks headquartered in their district. In addition, large bank team (formerly known as the "Multinational Division") employees³ may not have credit cards from banks supervised by their large bank team or from banks in the district where they are located. See 5 CFR 3101.108(b)(4)(i), as adopted in 1995; see also OCC Ethics Policy at 14.

The Department originally adopted the Supplemental Regulations' credit card restrictions on covered OCC district and large bank team employees, in part, to permit the supervisors of those employees to make work assignments free from the constraints that would have otherwise arisen from employees' credit card recusals. At the time they were adopted by the Department, these restrictions did not present a serious obstacle to covered district and large bank team employees obtaining credit cards. Since the issuance of the Supplemental Regulations, industry consolidation and

³ Because they were adopted prior to the recent changes to OCC's management structure, the Supplemental Regulations refer to large bank team employees as employees of the "Multinational Division." This final rule includes a technical correction to make appropriate changes to terminology.

conversions to the national bank charter have reduced sharply the credit card options available to those employees.

The Department has found that the imposition of such broad restrictions on obtaining credit cards on covered district and large bank team employees is not necessary for the administration of the OCC's supervisory activities. In situations where these covered employees are unlikely to examine a bank, the Department believes that the process of obtaining and holding a national bank credit card does not inherently present a conflict of interest or a likelihood of a loss of impartiality.

There are several changes made by these final rule amendments to address these concerns. The final rule changes the general statement of the prohibition on borrowing at 5 CFR 3101.108(b)(1) to omit the reference to credit cards as unnecessary and redundant. The import of the original provision would not be altered by this change.

The final rule also changes the Supplemental Regulations to eliminate the requirement for non-examiners (attorneys, economists, Senior Advisors, etc.) to be recused from matters involving banks from which they hold credit cards. The final rule, at § 3101.108(b)(4)(i), therefore, provides a general exception permitting non-examiners to seek or obtain credit cards from national banks on terms and conditions no more favorable than those offered to the general public. The final rule further changes the Supplemental Regulations to limit credit card recusals to examiners and to require examiners holding national bank credit cards to be recused only from bank *examinations* involving the issuing credit card banks, and not limit their participation in other matters, such as licensing or supervisory policy decisions affecting the bank. The exception in § 3101.108(b)(4)(ii) of the final rule, permitting examiners and their spouses and minor children to hold credit cards from banks the examiner is not assigned to examine, applies only to examiners and their spouses and minor children, and not any other covered OCC employees. The exception is available with respect to a credit card from a bank an examiner is not assigned to examine provided the credit card is obtained on terms and conditions no more favorable than those offered to the general public and the examiner maintains a written recusal from examinations of the bank.

An examiner is "assigned to examine" a bank if the examiner works either: (A) in a district, and the bank is one that he or she examines or that is assigned to his or her Assistant Deputy Comptroller (ADC) or rating official; or (B) in Large

Bank Supervision, and the bank is one to which the examiner is assigned or otherwise actually examines. The term "Large Bank Supervision" in the final rule replaces the term "Multinational Division" which is used in the current regulations. This is a technical change to reflect recent changes to the OCC's management structure.

The changes to the Supplemental Regulations narrow the current prohibition on district and large bank team employees by prohibiting only examiners in districts and large banks from holding credit cards issued by banks they are assigned to examine. Because this final rule more clearly connects the credit card restriction to the examiners' actual or likely work assignments, it will provide covered OCC district and large bank team examiners greater access to credit cards without unduly restricting supervisors' flexibility in making assignments or increasing the potential for conflicts of interest.

The final rule eliminates the retail store exception in 5 CFR 3101.108(b)(4)(ii) as heretofore codified to create a uniform OCC credit card policy. With the adoption of this final rule, the need for this exception should diminish because a retail store credit card would be treated as any other national bank credit card—generally permissible for examiners who recuse themselves unless the card is issued by a national bank assigned to the examiners' ADC or by a bank they examine. The final rule also eliminates the exception for mortgage assumptions as codified until now in 5 CFR 3101.108(b)(4)(iii) because this exception arises infrequently and will be better handled by the OCC ethics staff by way of recusal or waiver pursuant to 5 CFR 3101.108(g).

Matters of Regulatory Procedure

Administrative Procedure Act

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the proposed rulemaking requirements of the Administrative Procedure Act (APA). As set forth in the description of the final rule, this rule affects only the OCC and its personnel. Even if this rulemaking were subject to APA proposed rulemaking procedures, the Department finds good cause, pursuant to 5 U.S.C. 553 (b) and (d), to waive the requirements for notice and comment and 30-day delayed effective date because the rule affects only the OCC and its employees (and their immediate families) and operates to relieve a restriction that has resulted in

administrative and personnel inefficiencies.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. However, this final rule will not have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act. This rule affects the administrative operations of the OCC and it affects OCC employees. Any effect on national banks is merely incidental and creates no cost or burden for a bank.

Executive Order 12866

This final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects in 5 CFR Part 3101

Conflict of interests, Extensions of credit, Government employees, OCC employees.

For the reasons set forth in the preamble, the Department of the Treasury, with the concurrence of the Office of Government Ethics, amends 5 CFR part 3101 as follows:

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

1. The authority citation for part 3101 continues to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 212, 213; 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).

2. In § 3101.108, paragraphs (b)(1) and (b)(4) are revised to read as follows:

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

* * * * *

(b) *Prohibited borrowing*—(1) *Prohibition on employee borrowing*. Except as provided in this section, no covered OCC employee shall seek or obtain credit from any national bank or from an officer, director, employee, or subsidiary of any national bank.

* * * * *

(4) *Exceptions*—(i) *Non-examiners*. A covered OCC employee, other than an examiner, or the spouse or minor child of such a covered OCC employee, may seek or obtain a credit card from a national bank if the credit card is sought

or obtained on terms and conditions no more favorable than those offered to the general public.

(ii) **Examiners.** (A) An examiner, or the spouse or minor child of an examiner to whom the prohibition in paragraph (b)(1) of this section applies, may seek or obtain a credit card from a national bank the examiner is not assigned to examine so long as the credit card is obtained on terms and conditions no more favorable than those offered to the general public and the examiner submits to the Chief Counsel or designee a written disqualification from the examination of that bank. Such a recusal would not prevent an examiner from participating in other bank supervision matters outside the scope of an examination, such as licensing or supervisory policy decisions.

(B) For purposes of this section, examiners are assigned to examine a bank if they work:

(1) In a district, and the bank is one they examine or that is assigned to their Assistant Deputy Comptroller or rating official; or

(2) In Large Bank Supervision or Washington, D.C. Headquarters, and the bank is one to which they are regularly or otherwise assigned.

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Dated: June 27, 2002.

David D. Aufhauser,

General Counsel, Department of the Treasury.

Approved: July 9, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 02-17918 Filed 7-16-02; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 02-09]

RIN 1557-AB95

Prohibition Against Use of Interstate Branches Primarily for Deposit Production

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Final rule; correction.

SUMMARY: On June 6, 2002, the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively the Agencies) published a final rule in the **Federal Register** that amended each

Agency's regulation governing deposit production offices. This document corrects a typographical error in the OCC's regulation.

EFFECTIVE DATE: The correction made in this document is effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT:

Patrick T. Tierney, Attorney, Legislative and Regulatory Activities Division (202-874-5090).

SUPPLEMENTARY INFORMATION: The comma that appears at the end of paragraph (d)(1) of 12 CFR 25.62 should be a semicolon, and paragraph (d)(2) of § 25.62 should begin on a new line. Therefore, in the final rule FR Doc. 02-14130, published on June 6, 2002 (67 FR 38844), make the following correction:

1. On page 38847, in the third column, in § 25.62, paragraphs (d)(1) and (d)(2) are correctly revised to read as follows:

§ 25.62 Definitions.

* * * * *

(d) * * *

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

* * * * *

Dated: July 8, 2002.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 02-17757 Filed 7-16-02; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE186, Special Condition 23-119-SC]

Special Conditions; S-TEC on the New Piper Aircraft Corporation, PA 34-200T, Seneca V; Protection for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to S-TEC, One S-TEC Way Municipal Airport, Mineral Wells, Texas 76007, for a Supplemental Type Certificate for New Piper Aircraft Corporation, PA 34-200T, Seneca V airplanes. These airplanes will have

novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model Magic manufactured by Meggitt Avionics for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is July 5, 2002. Comments must be received on or before August 16, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE186, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE186. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT:

Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the