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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA07

Post-Employment Conflict of Interest Restrictions; Exemption of Positions and Revision of Departmental Component Designations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing this rule to provide notice of the exemption of certain senior employee positions from the one-year post-employment restriction of 18 U.S.C. 207(c) and to designate certain additional departmental components and to revoke certain existing component designations for purposes of 18 U.S.C. 207(c).

EFFECTIVE DATES: The additions to appendix A to part 2641, as set forth in amendatory paragraph 2 below, are retroactively effective June 2, 1994.

The amendments to appendix B to part 2641, as set forth in amendatory paragraph 3 below, are effective May 16, 1997.

Finally, the removal of certain designations from appendix B to part 2641 (and a related footnote redesignation), as set forth in amendatory paragraph 4 below, are effective on August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Julia Loring Eirinberg, Office of General Counsel and Legal Policy, Office of Government Ethics; telephone: 202-208-8000, extension 1108; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

Exemption of Positions

The Director of the Office of Government Ethics (OGE) is authorized

by 18 U.S.C. 207(c)(2)(C) to exempt eligible employee positions from 18 U.S.C. 207(c), the one-year post-employment restriction applicable to former "senior" employees. As explained in 5 CFR 2641.201(d)(1), termination from an exempted position does not trigger the restriction.

Pursuant to the procedures prescribed in 5 CFR 2641.201(d), the designated agency ethics official at the Department of Justice forwarded a letter to OGE dated May 16, 1994, requesting that the Director of OGE exempt the 21 United States Trustee positions from the restrictions of 18 U.S.C. 207(c). After carefully reviewing that letter and other relevant information, I determined as Director of OGE to exempt the 21 positions from 18 U.S.C. 207(c) in light of the criteria set forth in 5 CFR 2641.201(d)(5). These exemptions became effective on June 2, 1994, the date of my written response to the Department of Justice. See 5 CFR 2641.201(d)(4).

As specified in 5 CFR 2641.201(d)(3)(iii), the Director of OGE "shall annually publish in appendix A to this part an updated compilation of all exempted positions or categories of positions." Accordingly, appendix A of part 2641 is being amended by this rule to ensure publication of the exemptions in the CFR. These exemptions were not published previously due to administrative oversight.

Appendix A of this part, the heading of which is being revised to conform with that of appendix B, includes parenthetical entries highlighting the effective dates of the exemptions. As indicated in 5 CFR 2641.201(d)(4), "[a]n exemption shall inure to the benefit of the individual who holds the position when the exemption takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the exemption."

Designation and Revocation of Departmental Components

The Director of OGE is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c). The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination

from a senior employee position. However, eligible senior employees may be permitted to communicate to or appear before parts of their former department or agency if one or more components of the department or agency have been designated as separate agencies or bureaus by OGE.

As specified in 5 CFR 2641.201(e)(3)(iii), the Director of OGE "shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official." Component designations are listed in appendix B of this part. Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several agencies and departments have forwarded letters to OGE requesting the designation or revocation of components since appendix B was last revised in 1993 (58 FR 33755-33756 (June 21, 1993)). After carefully reviewing these requests in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.201(e)(6), I have determined to designate or revoke certain components as described below.

As requested by the Department of Commerce, I am revoking the designation of the United States Travel and Tourism Administration (USTTA) as a distinct and separate component of that Department. The USTTA was recently eliminated, although some of its functions continue to be performed by another component of the Department.

As requested by the Department of Defense (DOD), I am revoking the designations of the Defense Mapping Agency and the Defense Nuclear Agency as distinct and separate components of DOD. I am replacing them with two components which are, in large part, successor components. The new National Imagery and Mapping Agency absorbed the former Defense Mapping Agency and has responsibility for certain functions formerly performed by the Central Intelligence Agency and by several offices within DOD. The Defense Nuclear Agency was renamed the Defense Special Weapons Agency in 1996 as a result of a new charter and an expanded mission. The missions of the two new agencies remain distinct and separate from the parent Department.

As recommended by the Department of Health and Human Services (HHS), I

am revoking the designation of two components and designating several additional components as a result of a reorganization of that Department. Specifically, I am revoking the designation of the Social Security Administration (SSA) as a distinct and separate component of HHS since the SSA is no longer a part of the Department. I am also revoking the designation of the Public Health Service (PHS). I am, however, designating as distinct and separate seven components that had previously been operating divisions within the PHS: The Agency for Health Care Policy and Research; the Agency for Toxic Substances and Disease Registry; the Centers for Disease Control and Prevention, the Health Resources and Services Administration, the Indian Health Service, the National Institutes of Health; and the Substance Abuse and Mental Health Services Administration. Finally, I am designating one new HHS operating division as an additional distinct and separate component, the Administration on Aging.

As recommended by the Department of the Interior (DOI), I am revoking the designation of the Bureau of Mines and the Office of Territorial and International Affairs to reflect a reorganization of the DOI that eliminated those two bureaus. I am also revising the listing for the DOI to indicate that the name of the Office of Surface Mining has been changed to the Office of Surface Mining Reclamation and Enforcement.

As recommended by the Department of Justice (DOJ), I am amending appendix B so that the several Offices of the United States Marshals Service shall henceforth be considered a single component for purposes of 18 U.S.C. 207(c). Prior to this rule, the Office of the United States Marshal for each judicial district had been considered a separate component from each other such Office. Also, the United States Marshals Office for each judicial district will, like other designated DOJ components operating within a district, be considered separate from each Office of the United States Attorney for that district. In addition, I am amending the entry for the Independent Counsel to clarify that the designation applies only with respect to Independent Counsel appointed by the Attorney General. And, I am correcting the title of the Office of the Pardon Attorney.

As recommended by the Department of Labor (DOL), I am designating the Pension and Welfare Benefits Administration (PWBA) as an additional distinct and separate component of that Department. While the PWBA has been

in existence for some years, it was not previously designated as a component of the DOL for purposes of 18 U.S.C. 207(c).

I am designating the Surface Transportation Board (STB) as an additional distinct and separate component of the Department of Transportation (DOT). The STB, the successor to the Interstate Commerce Commission, was recently established as an independent entity within DOT.

As requested by the Department of the Treasury, I am revoking the designation of the United States Savings Bonds Division (SBD) as a distinct and separate component of that Department. The responsibilities of the former SBD have been taken over by the Bureau of the Public Debt, another component of the Department.

Finally, I am revoking the designation of the Central Liquidity Facility (CLF) as a component of the National Credit Union Administration (NCUA). The NCUA recommended the revocation because the functions of the CLF have been more closely integrated into those of the NCUA as a whole. Since the CLF was the sole designated component of the NCUA, I am removing the NCUA from the listing in Appendix B of "parent" departments or agencies.

As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." Most designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made by this rulemaking document are effective May 16, 1997. As also provided in 5 CFR 2641.201(e)(4), a revocation is effective 90 days after the effective date of the rule that revokes the designation. Accordingly, the component designation revocations made in this rulemaking will take effect August 14, 1997. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, as the Director of OGE, I find that good cause exists for waiving the general notice of proposed rulemaking and 30-day delayed effective date. It is important that OGE's designation of exempted positions and designation or revocation of separate departmental or agency components be published in the **Federal**

Register as promptly as possible. Also, this rule is interpretive in nature and, thus, it is exempt from the notice and delayed effectiveness requirements of 5 U.S.C. 553.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and applicable principles of regulation in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order since it deals with agency organization, management, and personnel matters and is not "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of entities because it affects only Federal agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: May 9, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2641 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2641—[AMENDED]

1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; 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.

2. Effective June 2, 1994, appendix A to part 2641 is amended by revising the appendix heading and by adding a listing for the Department of Justice between the introductory text and the listing for the Securities and Exchange Commission to read as follows:

Appendix A to Part 2641—Positions Exempted from 18 U.S.C. 207(c)

* * * * *

Agency: Department of Justice. Positions: United States Trustee (21) (effective June 2, 1994).

* * * * *

3. Effective May 16, 1997, appendix B to part 2641 is amended by revising the listings for the Department of Commerce, the Department of Defense, the Department of Health and Human Services, the Department of the Interior, the Department of Justice, the Department of Labor, the Department of Transportation, the Department of the Treasury and the National Credit Union Administration, to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Commerce

Components:

Bureau of the Census
Bureau of Export Administration (effective January 28, 1992)
Economic Development Administration
International Trade Administration
Minority Business Development Administration
National Oceanic and Atmospheric Administration
National Telecommunications and Information Administration
Patent and Trademark Office
Technology Administration (effective January 28, 1992)
United States Travel and Tourism Administration (effective January 28, 1992; expiring August 14, 1997)

Parent: Department of Defense

Components:

Department of the Air Force
Department of the Army
Department of the Navy
Defense Information Systems Agency
Defense Intelligence Agency
Defense Logistics Agency
Defense Mapping Agency (expiring August 14, 1997)
Defense Nuclear Agency (expiring August 14, 1997)
Defense Special Weapons Agency (effective May 16, 1997)
National Imagery and Mapping Agency (effective May 16, 1997)
National Security Agency

* * * * *

Parent: Department of Health and Human Services

Components:

Administration on Aging (effective May 16, 1997)
Administration for Children and Families (effective anuary 28, 1992)
Agency for Health Care Policy and Research (effective May 16, 1997)
Agency for Toxic Substances and Disease Registry (effective May 16, 1997)
Centers for Disease Control and Prevention (effective May 16, 1997)
Food and Drug Administration

Health Care Financing Administration
Health Resources and Services Administration (effective May 16, 1997)
Indian Health Service (effective May 16, 1997)
National Institutes of Health (effective May 16, 1997)
Public Health Service (expiring August 14, 1997)
Social Security Administration (expiring August 14, 1997)
Substance Abuse and Mental Health Services Administration (effective May 16, 1997)

Parent: Department of the Interior

Components:¹

Bureau of Indian Affairs (effective January 28, 1992)
Bureau of Land Management (effective January 28, 1992)
Bureau of Mines (effective January 28, 1992; expiring August 14, 1997)
Bureau of Reclamation (effective January 28, 1992)
Minerals Management Service (effective January 28, 1992)
National Park Service (effective January 28, 1992)
Office of Surface Mining Reclamation and Enforcement (effective January 28, 1992)
Office of Territorial and International Affairs (effective January 28, 1992; expiring August 14, 1997)
U.S. Fish and Wildlife Service (effective January 28, 1992)
U.S. Geological Survey (effective January 28, 1992)

Parent: Department of Justice

Components:

Antitrust Division
Bureau of Prisons (including Federal Prison Industries, Inc.)
Civil Division
Civil Rights Division
Community Relations Service
Criminal Division
Drug Enforcement Administration
Environment and Natural Resources Division
Executive Office for United States Attorneys² (effective January 28, 1992)
Executive Office for United States Trustees³ (effective January 28, 1992)
Federal Bureau of Investigation
Foreign Claims Settlement Commission
Immigration and Naturalization Service
Independent Counsel appointed by the Attorney General
Office of Justice Programs
Office of the Pardon Attorney (effective January 28, 1992)

¹ All designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary.

² The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

³ The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

Offices of the United States Attorney (94)⁴
Offices of the United States Marshal (94) (expiring August 14, 1997)⁵
Offices of the United States Trustee (21)⁶
Tax Division
United States Marshals Service (effective May 16, 1997)
United States Parole Commission
Parent: Department of Labor

Components:

Bureau of Labor Statistics
Employment and Training Administration
Employment Standards Administration
Mine Safety and Health Administration
Occupational Safety and Health Administration
Pension and Welfare Benefits Administration (effective May 16, 1997)

* * * * *

Parent: Department of Transportation

Components:

Federal Aviation Administration
Federal Highway Administration
Federal Railroad Administration
Federal Transit Administration
Maritime Administration
National Highway Traffic Safety Administration
Saint Lawrence Seaway Development Corporation
Surface Transportation Board (effective May 16, 1997)
United States Coast Guard
Parent: Department of the Treasury

Components:

Bureau of Alcohol, Tobacco and Firearms
Bureau of Engraving and Printing
Bureau of the Mint
Bureau of the Public Debt
Comptroller of the Currency
Federal Law Enforcement Training Center
Financial Management Center
Internal Revenue Service
Office of Thrift Supervision
United States Customs Service
United States Savings Bonds Division (effective April 7, 1992; expiring August 14, 1997)
United States Secret Service
Parent: National Credit Union Administration (expiring August 14, 1997)

Component:

Central Liquidity Facility (expiring August 14, 1997)

4. Effective August 14, 1997, appendix B to part 2641 is further amended by:

A. Removing the listing for the National Credit Union Administration (and the sole component thereunder);

B. Removing the United States Travel and Tourism Administration from the listing for the Department of Commerce, the Defense Mapping Agency and the Defense Nuclear Agency from the listing for the Department of Defense, the Social Security Administration and the Public Health Service

⁴ Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office.

⁵ Each Office of the United States Marshal for a judicial district shall be considered a separate component from each other such office.

⁶ Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.

from the listing for the Department of Health and Human Services, the Bureau of Mines and the Office of Territorial and International Affairs from the listing for the Department of the Interior, the United States Savings Bonds Division from the listing for the Department of the Treasury, and the Offices of the United States Marshal (94) (and related footnote 5) from the listing for the Department of Justice; and

C. Redesignating footnote 6 as footnote 5.

[FR Doc. 97-12898 Filed 5-15-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 1941

RIN 0560-AE99

Implementation of the Boll Weevil Eradication Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This action is being taken to implement provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997 (Act). The Act directed the Secretary to implement a new loan program to facilitate efforts to eradicate, and protect eradication zones, of the boll weevil. The intended effect is to comply with the Act, assist in boll weevil eradication, and promote cooperation between the United States Department of Agriculture (USDA) and State chartered organizations with regard to boll weevil eradication.

DATES: Effective May 16, 1997.

Comments must be submitted by July 15, 1997.

ADDRESSES: Submit written comments to the Director, Farm Loan Programs Loan Making Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Ave. SW, Washington, D.C. 20250-0522.

FOR FURTHER INFORMATION CONTACT: Michael R. Hinton, Branch Chief, Funds Management/Direct Loans Branch, FSA. Telephone: 202-720-1472; facsimile: 202-690-1117; or e-mail: mhinton@wdc.fsa.usda.gov

SUPPLEMENTARY INFORMATION

Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this program. The administration certifies that this program will not have a significant economic impact on a substantial number of small entities. By statute this program applies only to State chartered non-profit organizations whose primary mission is the eradication of the boll weevil. These loans cannot be made to small entities or individuals. Small entity farmers may be indirectly impacted by the program through lower producer assessments for boll weevil eradication, but the impact will be the same for large entity and individual producers.

Environmental Evaluation

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program". An environmental assessment (EA) has been completed. The EA found no significant environmental impact of the boll weevil eradication loan program. The record of decision and FONSI were published in the **Federal Register** on April 21, 1997.

Executive Order 12988

The interim rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule are not retroactive and preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. In accordance with section 212 (e) of the Department of Agriculture Reorganization Act of 1994, before any judicial action may be brought concerning the provisions of this rule, administrative review under 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Farm Service Agency (FSA) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may

result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, under the regulatory provisions of title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The Agency has reviewed this rule to determine the applicability of the Paperwork Reduction Act of 1995. In accordance with 5 CFR section 1320.3(c)(4), there are fewer than 10 persons or organizations from whom a collection of information can reasonably be expected within a 12-month period. The information requirements of this program do not impact a substantial majority of the industry, nor do they meet the rule of general applicability. The Agency determined that the regulatory provisions of 5 CFR part 1320 do not apply to this rule; therefore, it was not reviewed by the Office of Management and Budget.

Background

The Boll Weevil Eradication Program is a cooperative program between the Federal and State governments and the cotton industry. The Animal and Plant Health Inspection Service (APHIS) provides eligible grower organizations: (1) Equipment; (2) technical and administrative support; and (3) cost-sharing not to exceed 30 percent of the program costs. The portion of program costs not provided for by APHIS are paid by the eligible grower organizations through the collection of producer assessments. The high initial costs of eradication programs result in levels of assessments which create significant financial hardship on many producers.

The Act directed the Secretary to implement a new loan program to facilitate efforts to eradicate, and protect eradication zones, of the boll weevil. By implementing the Boll Weevil Eradication Loan Program, FSA will provide loans to eligible grower organizations for the purpose of spreading initial startup costs over a period of several years, which will reduce the initial annual assessment