

Rules and Regulations

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA14

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

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule, amendments.

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

DATES: The amendment to appendix A to part 2641 (as set forth in amendatory paragraph 2), is effective March 8, 2007.

The amendments to appendix B to part 2641 (as set forth in amendatory paragraph 3) are effective March 8, 2007.

Finally, the removal of the entire listing for the Department of Homeland Security in appendix B to part 2641 (as set forth in amendatory paragraph 4) is effective June 6, 2007.

FOR FURTHER INFORMATION CONTACT: Shelley K. Finlayson, Attorney-Advisor/Congressional Liaison Officer, or William E. Gressman, Senior Associate General Counsel, Office of General Counsel and Legal Policy, Office of Government Ethics, Telephone: 202-482-9300; **TDD:** 202-482-9293; **FAX:** 202-482-9237.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

Exemption of Positions

18 U.S.C. 207(c) prohibits a former "senior employee" for a period of one year from knowingly making, with the intent to influence, any communication to or appearance before an employee of the department or agency in which he served in any capacity during the one-year period prior to termination from senior service, if that communication or appearance is made on behalf of any other person, except the United States. For purposes of 18 U.S.C. 207, a "senior employee" is any employee (other than an individual covered by the "very senior employee" one-year restriction in 18 U.S.C. 207(d)) who was employed in a position for which the rate of pay is specified in or fixed according to the Executive Schedule, in a position for which the rate of basic pay is equal to or greater than 86.5 percent of the rate of basic pay payable for level II of the Executive Schedule, or in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade is O-7 or above. The term includes those individuals appointed by the President to a position under 3 U.S.C. 105(a)(2)(B) or by the Vice President to a position under 3 U.S.C. 106(a)(1)(B). The term also includes any person who was assigned from a private sector organization to an agency under the Information Technology Exchange Program, 5 U.S.C. chapter 37. An individual is subject to section 207(c) as a result of service as a special Government employee only if the individual served 60 or more days as a special Government employee during the one-year period before terminating service as a senior employee.

The representational bar of 18 U.S.C. 207(c) usually applies to all senior positions. However, 18 U.S.C. 207(c)(2)(C) provides that whenever the Director of OGE determines, after a review requested by the department or agency concerned, that the imposition of the restrictions with respect to a particular position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and granting the waiver would not create the potential for use of undue influence or unfair advantage,

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the position or category of positions is exempted from the one-year representational prohibition.

Any senior employee position is eligible for exemption except persons: Employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule); in positions whose occupants are appointed by the President pursuant to 3 U.S.C. 105(a)(2)(B); in positions whose occupants are appointed by the Vice President pursuant to 3 U.S.C. 106(a)(1)(B); or assigned by a private sector organization to an agency under the Information Technology Exchange Program. Positions exempted from 18 U.S.C. 207(c) are listed in appendix A to 5 CFR part 2641, OGE's regulation governing the executive branch post-employment conflict of interest restrictions.

The Director of OGE regularly reviews the position exemptions and, in consultation with the department or agency concerned, makes such additions and deletions as are necessary. As specified in 5 CFR 2641.201(d)(3)(iii), the Director shall respond to each initial exemption request from agency ethics officials and annually publish a compilation of all exempted positions or categories of positions. Section 2641.201(d)(5) further provides that, before exempting a position or positions from 18 U.S.C. 207(c), the Director must find: (1) That granting the exemption would not create the potential for use by former senior employees of undue influence or unfair advantage based on past Government service; and (2) that the imposition of the restriction would create an undue hardship on the particular department or agency in obtaining qualified personnel to fill such positions. Relevant factors for the second finding may include the payment of a special rate of pay to the incumbent of the position pursuant to specific statutory authority or a requirement that the incumbent of the position have outstanding qualifications in a scientific, technological, or other technical discipline.

Pursuant to the procedures prescribed in 5 CFR 2641.201(d), one agency forwarded two written requests in 2003 to OGE requesting that its listing in appendix A be amended.

Securities and Exchange Commission

In 2003, the Securities and Exchange Commission (SEC) requested that the Director of OGE exempt various new positions (termed "SK" positions) from 18 U.S.C. 207(c). These positions previously had been classified at GS-15 and below. However, when the SEC implemented "pay parity" authority under Pub. L. 107-123 to improve recruitment and retention, these positions then exceeded the pay threshold of 18 U.S.C. 207(c)(2)(A)(2) despite no increase in duties or responsibilities. Also included in one of the SEC requests was the position of Deputy Chief Litigation Counsel, Division of Enforcement, a position which itself is supervised by a position that was already exempted by OGE effective on October 29, 1991.

After carefully reviewing the changes requested by the SEC in light of the criteria in 18 U.S.C. 207(c)(2)(C) as implemented in 5 CFR 2641.201(d)(5), the then-Director of OGE granted these requests by letters dated November 10, 2003 and December 4, 2003. OGE is now amending appendix A to part 2641 to include these additional exempted SEC positions, retroactively effective to those respective dates (as parenthetically indicated in the amended appendix listing for the SEC positions concerned). An exemption "shall be effective as of the effective date of the Director's written response to the designated agency ethics official indicating that the request for exemption has been granted." 5 CFR 2641.201(d)(4). Once granted, the exemptions inured to the benefit of the individuals who held the positions when the exemptions took effect and their successors, but were not effective as to employees who terminated senior service from such positions prior to the effective date of the exemptions.

Revocation and Addition of Departmental Components

The representational bar of 18 U.S.C. 207(c) also 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, 18 U.S.C. 207(h) provides that whenever the Director of OGE determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director

shall by rule designate such agency or bureau as a separate component of that department or agency. As a result, a former senior employee who served in a "parent" department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employees of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been separately designated. Moreover, a former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.

Under 18 U.S.C 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The Director of OGE regularly reviews the component designations and determinations and, in consultation with the department or agency concerned, makes such additions and deletions as are necessary. Specifically, the Director "shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official." 5 CFR 2641.201(e)(3)(iii). Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director must find that there exists no potential for use by former senior employees of undue influence or unfair advantage based on past Government service, and that the component is an agency or bureau within a department or agency that exercises functions which are distinct and separate from the functions of the parent department or agency and from the functions of other components of that parent. 5 CFR 2641.201(e)(6).

Pursuant to the procedures prescribed in 5 CFR 2641.201(e), two departments have forwarded written requests to OGE to amend their respective listings in appendix B. After carefully reviewing the requested changes in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.201(e)(6), the Director of OGE has determined to grant these requests and amend appendix B to 5 CFR part 2641 as explained below.

Department of Homeland Security

The Department of Homeland Security (DHS) has requested that OGE remove all separate components from

the DHS listing as designated at 69 FR 68053-68056 (November 23, 2004). The Department has determined that a single, undifferentiated organization for purposes of 18 U.S.C. 207(c) is in the best interest of DHS, the Government, and the public as DHS strives to establish a single, unified workforce.

Accordingly, because the former components no longer exercise functions which are distinct and separate, the OGE Director is granting the request of DHS and is amending appendix B to part 2641 to remove the entire listing for DHS, including all of the DHS components.

As 5 CFR 2641.201(e)(4) provides, a component 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." Initial component designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B to part 2641, November 23, 2004 in the case of DHS components as noted above.

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 June 6, 2007. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

Department of Justice

The Department of Justice has requested that OGE designate the Office on Violence Against Women (OVW) as a distinct and separate component of the Department of Justice (DOJ) except as to the Office of Justice Programs (OJP) for purposes of 18 U.S.C. 207(c). Legislation passed in 2002 established Ovw as a separate and distinct office within DOJ. Pub. L. 107-273, codified at 42 U.S.C. 3796gg-0(b). However, because Ovw continues to work closely with OJP on a number of initiatives, DOJ has not requested that Ovw be considered separate from OJP, but only from other designated DOJ components.

Accordingly, the Director is granting the request of DOJ and therefore is amending the DOJ listing in appendix B to part 2641 to designate Ovw as a new component as discussed.

B. Matters of Regulatory Procedure*Administrative Procedure Act*

Pursuant to 5 U.S.C. 553, as the Director of the Office of Government Ethics, I find that good cause exists for

waiving the general requirements for notice of proposed rulemaking, opportunity for public comment, and, except as to the component designation revocations (see the preamble discussion above), a 30-day delayed effective date. It is important and in the public interest that the codification of OGE's previous designations of additional exempted positions as well as the designation revocations and new designation herein by OGE of the specified separate departmental components, which reflect the current organization of the concerned departments, be published in the **Federal Register** and take effect as promptly as possible.

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 small entities because it affects only Federal departments and 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.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a non-major rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of

regulation set forth 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" under the order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: March 1, 2007.

Robert I. Cusick,

Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2641 as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

■ 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 March 8, 2007, appendix A to part 2641 is amended by revising 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: Securities and Exchange Commission

Positions:

Solicitor, Office of General Counsel (effective October 29, 1991).

Chief Litigation Counsel, Division of Enforcement (effective October 29, 1991).

Deputy Chief Litigation Counsel, Division of Enforcement (effective November 10, 2003).

SK-17 positions (effective November 10, 2003).

SK-16 and lower-graded SK positions supervised by employees in SK-17 positions (effective November 10, 2003).

SK-16 and lower-graded SK positions not supervised by employees in SK-17 positions (effective December 4, 2003).

■ 3. Effective March 8, 2007, appendix B to part 2641 is amended by revising the listings for the Department of Homeland Security and the Department of Justice to read as follows:

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

* * * * *

Parent: Department of Homeland Security

Components:

Directorate of Emergency Preparedness and Response (effective November 23, 2004; expiring June 6, 2007).

Directorate of Information Analysis and Infrastructure Protection (effective November 23, 2004; expiring June 6, 2007).

Directorate of Science and Technology (effective November 23, 2004; expiring June 6, 2007).

Federal Law Enforcement Training Center (effective November 23, 2004; expiring June 6, 2007).

Transportation Security Administration (effective November 23, 2004; expiring June 6, 2007).

United States Secret Service (effective November 23, 2004; expiring June 6, 2007).

United States Coast Guard (effective November 23, 2004; expiring June 6, 2007).

* * * * *

Parent: Department of Justice

Components:

Antitrust Division.

Bureau of Alcohol, Tobacco, Firearms and Explosives (effective November 23, 2004).

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.

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 Trustees 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.

Independent Counsel appointed by the Attorney General.
 Office of Justice Programs.
 Office of the Pardon Attorney (effective January 28, 1992).
 Offices of the United States Attorney (94).⁴
 Offices of the United States Trustee (21).⁵
 Office on Violence Against Women⁶ (effective March 8, 2007).
 Tax Division.
 United States Marshals Service (effective May 16, 1997).
 United States Parole Commission.

* * * * *

■ Effective June 6, 2007, appendix B to part 2641 is further amended by removing the listing for the Department of Homeland Security (and all of the components thereunder).

[FR Doc. E7-4167 Filed 3-7-07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-26233; Directorate Identifier 2006-CE-63-AD; Amendment 39-14979; AD 2007-05-18]

RIN 2120-AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the finding of an improper geometry of some pulley brackets, which can offset the cable in the sheave. We are issuing this AD to require actions to correct the unsafe condition on these products.

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 Trustee for a region shall be considered a separate component from each other such office.

⁶ The Office on Violence Against Women shall not be considered separate from the Office of Justice Programs, but only from other designated components of the Department of Justice.

DATES: This AD becomes effective April 12, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 12, 2007.

ADDRESSES: You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4119; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 7, 2006 (71 FR 70908). That NPRM proposed to require a detailed inspection of the aileron control cable pulleys and brackets, and apply corrective actions as necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

EADS SOCATA believes the FAA should reference the changes in the NPRM of the compliance time from 10 hours time-in-service (TIS) in the MCAI and service bulletin to 50 hours TIS in the NPRM in the "FAA AD Differences" section.

The FAA sometimes needs to change compliance times for enforceability reasons. We normally do not include that as an FAA AD Difference in an AD action, unless it affects the actions being done. However, since this compliance time change was significant, we will note it as a difference. The difference will state that the MCAI and service bulletin requires the action at 10 hours TIS. Typically, this short of a compliance time would indicate an unsafe condition requiring urgent action. However, we did not consider this unsafe condition to be an urgent safety of flight condition and issued this action through the normal notice of proposed rulemaking (NPRM) AD process. The time of 50 hours TIS is an adequate compliance for this AD action and met the FAA requirements of an NPRM followed by a final rule.

EADS SOCATA comments that EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70-134, dated July 2005, is not an Alert.

The FAA agrees and changes the reference to the service information in the final rule.

EADS SOCATA states that the costs of the required parts is about \$450 per product and not the \$8,600 per product that is in the Costs of Compliance section of the NPRM. EADS SOCATA also estimates that it would take 2.5 work-hours to inspect and 8.5 work-hours to replace the nonconforming parts, if necessary. This total of 11 work-hours is less than the 12 work-hours that the FAA estimates in the NPRM.

The FAA agrees and has changed the Costs of Compliance section in the final rule to reflect the above costs.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.