

nonprecedential Orders, explain that parties may cite nonprecedential Orders, and also explain that the Board is not bound by nonprecedential Orders in its future decisions.

The Board believes that issuing and publishing nonprecedential Orders that include a substantive review of issues presented in an appeal will serve the useful purpose of informing parties of the Board's reasoning in a particular appeal. In addition, the new regulation should ensure the maximum degree of transparency in the Board's decision-making to the greatest extent possible.

#### List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

#### PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. Revise § 1201.117 to read as follows:

#### § 1201.117 Board decisions; procedures for review or reopening.

(a) In any case that is reopened or reviewed, the Board may:

- (1) Issue a single decision that denies or grants a petition for review, reopens an appeal, and decides the case;
- (2) Hear oral arguments;
- (3) Require that briefs be filed;
- (4) Remand the appeal so that the judge may take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(b) The Board may affirm, reverse, modify, or vacate the initial decision of the judge, in whole or in part. The Board may issue a final decision and, when appropriate, order a date for compliance with that decision.

(c) The Board may issue a decision in the form of a precedential Opinion and Order or a nonprecedential Order.

(1) *Opinion and Order.* An Opinion and Order is a precedential decision of the Board and may be appropriately cited or referred to by any party.

(2) *Nonprecedential Orders.* A nonprecedential Order is one that the Board has determined does not add significantly to the body of MSPB case law. The Board may, in its discretion, include in nonprecedential Orders a discussion of the issue(s) to assist the parties in understanding the reason(s) for the Board's disposition in a

particular appeal. Nonprecedential Orders are not binding on the Board or its administrative judges in any future appeals except when it is determined they have a preclusive effect on parties under the doctrines of res judicata (claim preclusion), collateral estoppel (issue preclusion), judicial estoppel, or law of the case. Parties may cite nonprecedential Orders, but such orders have no precedential value; the Board and its administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law.

**William D. Spencer,**  
*Clerk of the Board.*

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BILLING CODE 7400-01-P

## DEPARTMENT OF THE TREASURY

### Office of Financial Research

#### 12 CFR Chapter XVI

RIN 1505-AC38

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

**AGENCY:** Office of Financial Research, Treasury.

**ACTION:** Interim rule.

**SUMMARY:** The Department of the Treasury (Department), with the concurrence of the Director of the Office of Government Ethics (OGE), is establishing a new chapter in Title 12 of the Code of Federal Regulations to incorporate certain post-employment prohibitions that apply to employees of the Office of Financial Research (OFR). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) provides for certain post-employment prohibitions if OFR employees have had access to transaction or position data or other business confidential information about financial entities required to report to OFR.

**DATES:** *Effective date:* September 30, 2011. *Comment due date:* November 29, 2011.

**ADDRESSES:** Interested persons are invited to submit comments on all aspects of the interim rule through one of these methods:

*Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic

submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public.

*Mail:* Department of the Treasury, Office of Financial Research, Attention: Post-Employment Interim Rule, Room 1334, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Fax and e-mail comments will not be accepted.

**Instructions:** In general, the Department will enter all comments received into the docket and make them available, without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. Properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>.

You may personally inspect comments at the Department of the Treasury Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC. You can make an appointment to inspect comments by calling (202) 622-0990.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Horton, Deputy Assistant General Counsel (Ethics) at (202) 622-0450 or [Ethics@treasury.gov](mailto:Ethics@treasury.gov).

**SUPPLEMENTARY INFORMATION:** Dodd-Frank (Pub. L. 111-203), sets forth rules that apply to employees of the OFR. This interim rule establishes 12 CFR chapter XVI, consisting of part 1600, which generally prohibits the Director of the OFR and any employee of the OFR who has had access to the transaction or position data maintained by OFR's Data Center or other business confidential information about financial entities required to report to the OFR from being employed by or providing advice or consulting services to a financial company, for a period of one year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the OFR.

The OFR was established by section 152 of Dodd-Frank (Public Law 111–203). Section 152(g) of Dodd-Frank provides that:

The Secretary [of the Treasury], with the concurrence of the Director of the Office of Government Ethics, shall issue regulations prohibiting the [OFR] Director and any employee of the Office [OFR] who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office [OFR] from being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the Office [OFR]. For employees whose access to business confidential information was limited, the regulations may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

As authorized in section 152(g) of Dodd-Frank, the regulations include an exception to the general post-employment prohibitions that apply to employees of the OFR. Under certain circumstances and on a case-by-case basis, employees whose access to business confidential information was limited may request a waiver from the post-employment prohibitions.

#### **Standards of Ethical Conduct for Employees of the Office of Financial Research**

The Department is adding this regulation to explain the circumstances under which an OFR employee, who has had access to the transaction or position data maintained by OFR's Data Center or other business confidential information about financial entities required to report to the OFR, is prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether the financial company is required to report to the OFR, for a period of one year after last having had access in the course of official duties to transaction or position data or business confidential information maintained by the Data Center.

The new rule permits all OFR employees whose access to business confidential information was limited to seek a waiver from the Designated Agency Ethics Official.

#### **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 interim rule, this rule affects only the OFR and its personnel. Nonetheless, the Department is issuing this interim rule for comment and welcomes comments from the public on all aspects of the rule. 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 OFR and its employees. It is in the public interest that this rule, which concerns matters of agency management, personnel, organization, practice and procedure, and in part relieves certain restrictions placed on OFR employees, become effective on the date of publication.

#### **Regulatory Flexibility Act Analysis**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

#### **Executive Order 12866**

This interim rule is not a “significant regulatory action” for the purposes of Executive Order 12866.

#### **Unfunded Mandates Reform Act**

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This rule addresses restrictions on OFR employees regarding certain post-employment activities. The Department therefore has determined that the rule will not result in expenditures by State, local or Tribal governments or by the private sector of \$100 million or more. Accordingly, the Department has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### **Lists of Subjects in 12 CFR Part 1600**

Post employment, Ethics, employees. For the reasons set forth in the preamble, the Department, with the concurrence of OGE, establishes 12 CFR

chapter XVI, consisting of part 1600, to read as follows:

#### **CHAPTER XVI—OFFICE OF FINANCIAL RESEARCH**

#### **PART 1600—ORGANIZATION AND FUNCTIONS OF THE OFFICE OF FINANCIAL RESEARCH**

Sec.

1600.1 Standards of ethical conduct.

**Authority:** 5 U.S.C. 301, 7301, 31 U.S.C. 321, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) (Pub. L. 111–203); E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306.

#### **§ 1600.1 Standards of ethical conduct.**

This section applies to the employees of the Office of Financial Research and is in addition to 5 CFR 3101.101–104, and 31 CFR part 0:

(a) *Definitions*—For purposes of this subpart:

(1) “Business confidential information” shall include trade secret or other formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers. This shall include non-public position and transaction data, as well as data provided to supervisors or regulators that is unpublished.

(2) “Position data” is defined as:

(i) Data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

(ii) Includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position.

(3) “Transaction data” is defined as the structure and legal description of a financial contract, with sufficient detail to describe the rights and obligations between counterparties and make possible an independent valuation.

(4) “Micro-level data” is defined as information specific to an individual transaction or position.

(5) “Masked data” is defined as data that has been altered to prevent attribution to a particular financial company.

(6) “Financial company” has the same meaning given to such term in title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5301 *et seq.* (2010), and includes an insured depository institution and an insurance company.

(b) *One-year post-employment restriction.* (1) A current or former employee of the Office of Financial Research who has had access to the transaction or position data or business confidential information maintained by the Data Center about financial entities required to report to the Office may not, within one year after last having had access in the course of official duties to such transaction or position data or business confidential information, be employed by or provide advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(2) A current or former employee of the Office of Financial Research who has had limited access to the transaction or position data or business confidential information maintained by the Data Center about financial entities required to report to the Office may request a written waiver pursuant to paragraph (c) of this section from the Designated Agency Ethics Official to be employed by or provide advice or consulting services to a financial company, provided that the issuance of the waiver would not compromise any data or business confidential information.

(c) *Waivers*—The post-employment restrictions set forth in section 152(g) of the Dodd-Frank Wall Street Reform and Consumer Protection Act may be waived in whole or in part for an employee with limited access to the transaction or position data or business confidential information maintained by the Data Center if—

(1) The Designated Agency Ethics Official, in consultation with the Director of the Office of Financial Research or the Department's General Counsel in instances where consultation with the Director poses a conflict or the Director's position is vacant, determines in writing that such waiver is unlikely to compromise any financial company's business confidential information, unfairly advantage or disadvantage any financial company, or affect the integrity or effectiveness of the Office of Financial Research.

(2) Relevant factors to be considered by the Designated Agency Ethics Official and the Director or General Counsel include—

(i) The nature and importance of the employee's position and the degree to which the employee had access to non-public or business confidential data for the purpose of analysis, standardization, or performing applied research or essential long-term research;

(ii) Whether the information to which the employee had access revealed

positions or transactions of an individual financial company;

(iii) Whether the data, especially position data, remains sensitive considering changing circumstances or the passage of time;

(iv) Whether the employee had access to micro-level data, as compared to aggregated information;

(v) If the employee had access to micro-level data, whether it was sufficiently masked or coded to protect the identity of the provider or the subject financial company;

(vi) Whether the information to which the employee had access would provide a financial company employer with a competitive commercial advantage;

(vii) Whether the financial company employer has made a satisfactory representation that it has adopted screening measures which will effectively prevent a potential employee from sharing any transaction or position data or business confidential information acquired at the Office of Financial Research one year prior to accepting employment with the company;

(viii) Whether granting the waiver would affect the willingness of a financial company to continue to provide transaction or position data or business confidential information to the Office; and

(ix) Whether the proposed employment would create an appearance of impropriety or would otherwise adversely affect the interests of the government or compromise the integrity of the office.

(d) The following examples are illustrative of how the OFR post-employment prohibitions would apply under certain circumstances:

(1) *Example 1.* (i) Fact pattern: OFR employs a business data manager and such employee has no access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to OFR.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(2) *Example 2.* (i) Fact pattern: OFR employs a data analyst and such employee has access to transaction or position data across all sectors maintained by the Data Center or other business confidential information about specific financial entities required to report to OFR.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would be prohibited, for a period of one year immediately after leaving OFR, from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(3) *Example 3.* (i) Fact pattern: OFR employs a data analyst and such employee has access to transaction or position data across all sectors maintained by the Data Center or other business confidential information about specific financial entities required to report to OFR. Employee last had access to such data six months before termination of her employment at OFR.

(ii) Designated Agency Ethics Official's Determination: Upon termination of employment by OFR, such employee would be prohibited, for a period of six months immediately after leaving OFR, from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(4) *Example 4.* (i) Fact pattern: OFR employs a researcher and such employee has access only to "aggregated" or "masked" transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to OFR.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(5) *Example 5.* (i) Fact pattern: OFR employs a data analyst and such employee has access to transaction or position data maintained by the Data Center or other business confidential information relating to a particular sector (i.e. banking).

(ii) Designated Agency Ethics Official's Determination: Upon termination of employment by OFR, such employee would be prohibited, for a period of one year immediately after leaving OFR, from being employed by or providing advice or consulting services to a financial company in that particular sector (i.e. banking) where such employment or services involves employment or advice or consulting services, regardless of whether that financial company is required to report to the Office. Such employee would be

granted a waiver to work in other designated sectors immediately after leaving OFR.

(6) *Example 6.* (i) Fact pattern: OFR employs a data analyst and such employee has access to business confidential information in an area where data, such as equity mutual fund holdings, changes frequently. Employee last had access to such data six months before termination of her employment at OFR and, because of portfolio turnover, there is no risk of compromising business confidential information.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(7) *Example 7.* (i) Fact pattern: OFR employs an information technology specialist and such employee has access only to "masked" transaction or position data maintained by the Data Center or other "masked" business confidential information about specific financial entities required to report to OFR.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

Dated: September 19, 2011.

**George W. Madison,**  
General Counsel, Department of the Treasury.  
[FR Doc. 2011-25105 Filed 9-29-11; 8:45 am]

**BILLING CODE 4810-25-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2010-1199; Directorate Identifier 2010-NM-225-AD; Amendment 39-16818; AD 2011-20-07]

RIN 2120-AA64

#### **Airworthiness Directives; The Boeing Company Model 737-600, -700, -700C, -800, and -900 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for

the products listed above. That AD currently requires replacement of the power control relays in the P91 and P92 power distribution panels for the fuel boost and override pumps with new, improved relays having a ground fault interrupter (GFI) feature, or installation and maintenance of universal fault interrupters (UFIs) using a certain supplemental type certificate. This new AD continues to require the actions of the existing AD and also specifies which relays may be replaced by GFIs or UFIs. This AD was prompted by a need to clarify which relays may be replaced by installation of UFIs. We are issuing this AD to prevent pump housing burn-through due to electrical arcing, which could create a potential ignition source inside a fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

**DATES:** This AD is effective November 4, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 22, 2010 (75 FR 50859, August 18, 2010).

**ADDRESSES:** For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; e-mail [me.boecom@boeing.com](mailto:me.boecom@boeing.com); Internet <https://www.myboeingfleet.com>. For TDG Aerospace information identified in this AD, contact TDG Aerospace, Inc., 545 Corporate Drive, Escondido, California 92029; telephone 760-466-1040; fax 760-466-1038; Internet <http://www.tdgaerospace.com>; e-mail [info@tdgaerospace.com](mailto:info@tdgaerospace.com). You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket

Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; phone: 425-917-6482; fax: 425-917-6590; e-mail: [georgios.roussos@faa.gov](mailto:georgios.roussos@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2010-17-05, Amendment 39-16395 (75 FR 50859, August 18, 2010). That AD applies to the specified products. The NPRM published in the **Federal Register** on December 20, 2010 (75 FR 79317). That NPRM proposed to continue to require replacement of the power control relays in the P91 and P92 power distribution panels for the fuel boost and override pumps with new, improved relays having a ground fault interrupter (GFI) feature, or installation and maintenance of universal fault interrupters (UFIs) using a certain supplemental type certificate. That NPRM also proposed to specify which relays may be replaced by GFIs or UFIs.

##### **Actions Since NPRM Was Issued**

We have been informed that referring to TDG Aerospace UFIs, as provided in paragraph (g)(2)(ii) of the NPRM (75 FR 79317, December 20, 2010), violates Office of the Federal Register (OFR) regulations (1 CFR part 51) for approval of optional materials "incorporated by reference" in rules. We have revised paragraph (g)(2)(ii) of this AD to specify that installation of TDG Aerospace UFIs, as provided in that paragraph, must be done in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. We have also added Note 2 to this AD to specify that additional guidance on installing TDG Aerospace UFIs can be found in TDG Aerospace Supplemental Type Certificate (STC) ST02076LA.

##### **Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

##### **Request To Allow Credit for Accomplishment of STC**

Continental Airlines (CAL) requested that paragraph (h) of the proposed AD