

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 300

RIN 3206-AL18

#### Revocation of Final Rule Eliminating Time-in-Grade Requirements Pending Policy Review; Extension of Effective Date During Rulemaking

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Notice of proposed rulemaking with request for public comments; notice of proposed extension of effective date with request for public comments.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) proposes to revoke the final rule, titled Time-in-Grade Rule Eliminated, published in the **Federal Register** on November 7, 2008, pending OPM's review and consideration of additional public comments received in response to a March 9, 2009 **Federal Register** notice which extended the final rule's effective date. OPM also proposes to extend the final rule's effective date for an additional 90 days, from May 18, 2009 until August 16, 2009, to avoid the unnecessary expense of allowing a rule to take effect that may later be amended or revoked as a result of the rulemaking proceeding. OPM seeks comments, with a 30-day comment period, on the merits of revoking, retaining, or amending OPM's November 7, 2008 final rule. OPM also seeks comments, with a 5-day comment period, on the merits of extending the final rule's effective date pending the completion of the rulemaking proceeding.

**DATES:** The effective date of Time-in-Grade Rule Eliminated, published in the **Federal Register** on November 7, 2008 (73 FR 66157), was delayed by a document published March 9, 2009 (74 FR 9951) to May 18, 2009, unless the effective date is extended to August 16, 2009 as proposed in this document. The comment period for OPM's proposal to extend the final rule's effective date will close on May 12, 2009. The comment

period for OPM's proposal to revoke the final rule will close on June 10, 2009.

**ADDRESSES:** You may submit comments, identified by RIN number "3206-AL18," using any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [employ@opm.gov](mailto:employ@opm.gov). Include "RIN 3206-AL18, Time in Grade" in the subject line of the message.

*Fax:* (202) 606-2329.

*Mail:* Angela Bailey, Deputy Associate Director, Center for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700.

*Hand Delivery/Courier:* Angela Bailey, Deputy Associate Director, Center for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Warren by telephone (202) 606-0960; by fax (202) 606-2329; by TTY (202) 418-3134; or by e-mail [janice.warren@opm.gov](mailto:janice.warren@opm.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 6, 2008, OPM proposed, at 73 FR 6857, removing and reserving 5 CFR part 300, subpart F, thereby eliminating the time-in-grade restriction on advancement to competitive service positions in the General Schedule. Under the rule that OPM proposed to eliminate, employees in competitive service General Schedule positions at grades 5 and above must serve 52 weeks in grade before becoming eligible for promotion to the next grade level. Abolishing the restriction would eliminate the 52-week service requirement. If the requirement is eliminated, an employee must continue to meet occupational qualification standard requirements, and any additional job-related qualification requirements established for the position.

On November 7, 2008, after considering comments from seven agencies, five unions, one national employee organization, and 33 individuals, as well as 61 form letters from individuals, OPM issued a final rule, at 73 FR 66157, eliminating the time-in-grade restriction. The final rule was given an effective date of March 9,

2009 in order to give agencies time to amend their policies and communicate changes to their human resources staff and employees.

On March 9, 2009, OPM published a document, at 74 FR 9951, extending the final rule's effective date until May 18, 2009 and reopening the public comment period. OPM issued this notice pursuant to a January 20, 2009 White House memorandum on regulatory review, which requested agencies to consider extending for 60 days the effective date of regulations that were published in the **Federal Register** but that had not yet taken effect, for the purpose of reviewing questions of law and policy raised by those regulations.

#### Proposal To Revoke the Final Rule

OPM received public comments in response to the March 9, 2009 **Federal Register** notice. Ten individuals commented favorably on the final rule. One of these individuals also offered qualified support for extending the rule's effective date. One executive agency commented neutrally on the final rule. Two executive agencies, one legislative agency, and one individual submitted qualified comments on the final rule requesting amendments or clarifications or stating concerns about implementation. Seven individuals and two labor organizations commented in opposition to the final rule. One of these labor organizations also commented in favor of extending the rule's effective date. One individual commented solely in opposition to extending the final rule's effective date. Finally, one individual submitted a statement describing his personal experience with time-in-grade requirements, but not commenting on the rule or its effective date.

As OPM stated in its March 9, 2009 **Federal Register** notice, the purpose of the additional public comment period was "to allow interested parties to provide comments about issues of law and policy" raised by regulations that had not yet taken effect. OPM's March 9, 2009 **Federal Register** referenced the January 20, 2009 White House memorandum on regulatory review, available at [http://www.whitehouse.gov/omb/inforeg\\_regmatters/](http://www.whitehouse.gov/omb/inforeg_regmatters/), which stated that the purpose of extending the effective date and reopening the public comment period for such rules was to give the incoming Administration's

appointees and designees an opportunity to review and approve such rules. As noted above, when OPM reopened the public comment period, we received numerous substantive comments opposing the final rule, requesting amendments or clarifications, or stating concerns about implementation. OPM needs time to evaluate these comments, as well as the new comments in favor of the rule, as part of the review and evaluation process described in the White House memorandum on regulatory review.

Accordingly, OPM proposes to revoke the November 7, 2008 final rule pending OPM's review and consideration of the additional public comments that were solicited on March 9, 2009. OPM seeks additional public comments, with a 30-day comment period, on the merits of revoking, retaining, or amending the November 7, 2008 final rule. When OPM issues a new final rule, or reissues the November 7, 2008 final rule, with or without amendments, OPM will account for the public comments received in response to the March 9, 2009 **Federal Register** notice, as well as any comments received in response to this notice of proposed rulemaking.

#### **Proposal To Extend the Final Rule's Effective Date**

The November 7, 2008 final rule is scheduled to take effect on May 18, 2009. However, in its February 6, 2008 notice of proposed rulemaking, OPM recognized that agencies need significant time to implement any new policy on time-in-grade requirements, and to communicate the policy to human resources staff and employees. This concern was validated by one agency's comment, in response to OPM's March 9, 2009 **Federal Register** notice, that implementing a time-in-grade policy required significant lead time, because of that agency's need to modify merit promotion procedures, notify labor organizations, and amend hundreds of vacancy announcements for competitive service positions, all at a time when the agency had significant competing obligations.

Unless the final rule's effective date is further extended, agencies likely will undertake significant effort and expense to meet the changes required by the rule. If the decision is made to revoke or amend the final rule, these expenses will have been incurred unnecessarily. Furthermore, OPM will have to begin answering questions and providing compliance assistance about how the final rule is to be implemented, guidance that will only confuse agencies if new guidance about a revised rule has to be provided in the near future. For

these reasons, OPM proposes to extend the November 7, 2008 final rule's effective date by an additional 90 days, until August 16, 2009. This will give OPM time to review public comments and complete the rulemaking proceeding. OPM is opening a 5-day public comment period on the proposed extension of the final rule's effective date, separate from the 30-day public comment period on the notice of proposed rulemaking.

OPM suggests that agencies delay preparations and financial commitments associated with the changes required by the final rule until a decision is made regarding whether and when, if at all, the regulation will go into effect.

#### **Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

#### **E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### **List of Subjects in 5 CFR Part 300**

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. FAA-2009-0236; Directorate Identifier 2009-NE-06-AD]

RIN 2120-AA64

#### **Airworthiness Directives; CFM International, S.A. CFM56-7B Series Turbofan Engines**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for CFM International, S.A. CFM56-7B series turbofan engines. This proposed AD would require initial and repetitive eddy current inspections (ECIs) of certain part number (P/N) low-pressure

(LP) turbine rear frames. This proposed AD results from a refined life analysis by the engine manufacturer that shows the need to identify an initial and repetitive inspection threshold for inspecting certain LP turbine rear frames. We are proposing this AD to prevent failure of the LP turbine rear frame from low-cycle-fatigue cracks. Failure of the LP turbine rear frame could result in engine separation from the airplane, possibly leading to loss of control of the airplane.

**DATES:** We must receive any comments on this proposed AD by July 10, 2009.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

#### **FOR FURTHER INFORMATION CONTACT:**

Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [antonio.cancelliere@faa.gov](mailto:antonio.cancelliere@faa.gov); (781) 238-7199.

Contact CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552-2800; fax (513) 552-2816, for a copy of the service information identified in this proposed AD.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2009-0236; Directorate Identifier 2009-NE-06-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We