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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206-AL18

Time-in-Grade Eliminated

AGENCY: Office of Personnel Management.

ACTION: Final rule; withdrawal.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing the final rule, titled Time-in-Grade Elimination, published in the **Federal Register** on November 7, 2008. After carefully considering all of the comments OPM has determined that it would be more productive to consider the merits of the time-in-grade issue as part of a more comprehensive review of pay, performance, and staffing issues than to regulate this particular issue in piecemeal fashion.

DATES: Effective August 11, 2009, the final rule published November 7, 2008, at 73 FR 66157, extended March 9, 2009, at 74 FR 9951, and further extended May 18, 2009, at 74 FR 23109, is withdrawn.

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.

SUPPLEMENTARY INFORMATION: On November 7, 2008 the U.S. Office of Personnel Management (OPM) published in the **Federal Register** (73 FR 66157) a final rule eliminating the Time-in-Grade restriction on advancement to competitive service positions in the General schedule. This rule had an effective date of March 9, 2009.

On March 9, 2009 the U.S. Office of Personnel Management (OPM) published a final rule in the **Federal Register** (74 FR 9951) extending the

March 9, 2009, effective date until May 18, 2009, and opening a new public comment period. OPM provided this comment period to allow interested parties to submit views on issues of law and policy raised by the final rule published on November 7, 2008.

On May 11, 2009, OPM published in the **Federal Register** (74 FR 21771) a notice proposing to revoke the final rule and proposing to further extend its effective date to August 16, 2009, with a request for public comments on the merits of revoking, retaining, or amending OPM's November 7, 2008 final rule and on the merits of extending the effective date of the final rule pending the completion of the rulemaking proceeding. On May 18, 2008, OPM published a final rule (74 FR 23109) extending the effective date of the final rule to August 16, 2009, and responding to public comments on the proposal to extend the final date of the regulation.

The following is a discussion of the comments OPM received during the two public comment periods raised in connection with the merits of the final rule published on November 7, 2008.

Comments From the March 9, 2009 Federal Register Notice

OPM received 43 comments on issues of law and policy raised by the final rule. These comments were provided by 37 individuals, three employee organizations, and three federal agencies.

OPM received 11 comments from individuals who generally supported retaining TIG rules.

We received 8 comments from individuals who generally supported elimination of TIG rules.

One individual supported TIG elimination on the basis that employees would still need one-year specialized experience in order to be promoted.

Two individuals commented that the time-in-grade regulation is a bad rule because it discriminates against highly-qualified, highly-capable and highly-productive candidates on the basis of an arbitrary time period.

Another individual, who generally supports TIG elimination, expressed concern over the possibility of abuse by hiring managers if the final rule were to go into effect. This person also questioned how TIG elimination would protect against grade-leaping by employees.

Another individual expressed similar concern. This person noted that although TIG elimination will provide some flexibility to agency managers, the commenter was concerned that elimination of this rule may encourage managers to abuse the system by promoting their favorite employees. This responder suggested the need for creation of a subjective factor to assist management with assessing performance and promotions.

One individual commented that TIG elimination will allow the Federal government to retain competent, capable and qualified employees. This individual also suggested that TIG removal will eliminate the possibilities of abuse and the 'good old boy' promotions.

Another individual commented that the elimination of time-in-grade will allow status candidates the ability to apply for higher graded positions based on past experience.

One respondent believes that TIG rules should be eliminated in order for competent and dedicated workers to be promoted to positions with more responsibility than the positions these employees currently occupy.

Another commenter supported TIG elimination on the basis that qualified, productive individuals should not have to wait 52 weeks to be promoted.

One individual commented that the elimination of time-in-grade would be a win-win for the agencies.

Two employee organizations submitted similar comments expressing the following views: Successful performance in a position for one year is an extremely useful measure for determining whether to promote an individual. With respect to promotions, both managers and employees suffer from a process that is not transparent and objective and TIG elimination will only add to this lack of transparency. Both organizations questioned OPM's justification for abandoning a long-standing practice of the competitive service. TIG elimination strips managers of their defense against charges that unequal pay amounts are based on race, gender, age or some other non-merit factors. Lastly, both organizations expressed concern that TIG elimination may result in agencies appointing people, who qualify for higher grade levels (e.g., General Schedule (GS) level 12), to positions at lower grade levels

(e.g., GS-5), and then promoting them quickly to the higher graded position (e.g., GS-12) without competition. The net effect would be these employees essential obtain the higher graded position (GS-12) quickly based on competition at the lower graded position (GS-5).

Another employee organization commented that implementing the final rule (*i.e.*, TIG elimination) would create more problems than it could solve because of the cost and time considerations needed to establish and administer a replacement process which is transparent and trustworthy and that contains a standardized waiting period that is equitable and fair.

One commenter believes that TIG ensures competence and saves the government money by preventing inexperienced employees the opportunity to receive undeserved promotions; and it is risk that needs not be taken.

One individual stated that TIG elimination would be a slap in the face to all long serving Federal employees who had been subject to these rules.

One individual commented that TIG elimination will increase the power of the self-interested manager to build an entourage rather than a competent workforce.

One individual commented that eliminating time-in-grade would cause a deficit in trained and knowledgeable managers and a short and long-term detrimental impact on agency's missions.

The same individual stated the one-year requirement is not long enough for an employee to gain the knowledge or technical skills needed for promotion and that, eliminating time-in-grade will open the flood gates to more unqualified employees being promoted.

The same person suggested TIG elimination may lead to the possibility of abuse and misuse and to experienced employees being overlooked for promotions (or even dismissed) because they lacked the wrong connections necessary to obtain a promotion.

Another individual supported TIG elimination only if OPM developed a watchdog element or a randomly select ad-hoc group which investigated promotions.

One respondent believes TIG elimination will have no net effect on an individual's chances for promotion as long as the requirement for one-year of specialized experience remains in tact. This individual questioned the logic in eliminating an objective measure (TIG) in favor of a subjective one (specialized experience).

Beyond the Scope

One agency commented that OPM should give agencies advanced notice and adequate time to implement and modify merit promotion procedures so that agencies can notify employee unions as well as provide training before the implementation date.

The same agency and another federal agency suggested that OPM clarify whether agencies will continue to have the option of imposing agency-specific TIG requirements after the November 7, 2008 final rule becomes effective (*i.e.*, after TIG is eliminated).

One of these agencies also commented that OPM provide clear and timely policy guidance on transitioning this change.

Another agency suggested OPM provide guidance on a variety of topics in the event that TIG is eliminated. These topics include: How to credit experience, whether TIG removal applies to career ladder positions, whether employees in career ladder positions may skip grade levels, and whether there are any limitations on movement within career ladder positions.

Two employee organizations noted that seniority is a widely accepted explanation by the courts and other federal agencies to justify the difference in pay for equally qualified employees.

The same two entities suggested OPM consult with stakeholders and provide sufficient training and objective measures for a fair and transparent process before eliminating time-in-grade.

One individual submitted a statement describing his personal experience with time-in-grade requirements, but not commenting on the rule.

Another individual commending the administration for proposing to eliminate time-in-grade, however this comment was made in reference to a demonstration project authority which is not subject to time-in-grade restrictions.

Comments From the May 11, 2009 Federal Register Notice

OPM received comments from 154 individuals, 3 employee organizations, and 2 federal agencies on the merits of retaining, revoking, or amending the final rule.

Retaining Time-in-Grade

OPM received 33 comments on retaining the time-in-grade regulation. These comments were provided by thirty two individuals and one national employee organization.

The national employee organization suggested that eliminating time-in-grade

will cause low employee morale and lead to confusion. This entity commented that the time-in-grade regulation provides a tool for eligibility that eliminates capriciousness, favoritism, prejudice or bias.

Sixteen individuals commented generally that time-in-grade should be retained.

One individual suggested TIG elimination will stress agencies' budgets and place added burdens on supervisors to promote employees sooner than otherwise would be the case.

Seven individuals commented on the need for a mechanism to ensure fair recruitment and placement. These respondents indicated that TIG elimination would provide management with a tool to use favoritism to select or promote employees based on personal choices.

One individual commented that TIG elimination may result in increased litigation for the Equal Employment Opportunity Commission, federal agencies, and employee unions.

One individual commented the elimination of time-in-grade would put a huge burden on human resources, and that keeping time-in-grade restrictions would eliminate rapid advancements.

One individual suggested that elimination of time-in-grade will lead to disproportionate control on the part of employees regarding their opportunities for promotion.

One individual commented that elimination of time-in-grade would result in a popularity contest, and therefore abuse by management, to determine which employees receive promotions.

One individual commented that TIG elimination would cause continued recruitment of inexperienced people and provide management an opportunity to promote their favorite high performer.

One individual suggested that TIG elimination would lead to imbalances within an agency's workforce (due to increased promotions) and that TIG removal would only benefit newly hired employees.

One individual suggested that TIG elimination will lead to and justify abuses by management.

One individual commented that TIG elimination would erode Federal employee's faith in their human resources promotion policy.

Revoking Time-in-Grade

OPM received 107 comments on the merits of revoking the time-in-grade regulation. These comments were provided by 106 individuals, and 1 federal agency.

Sixty-seven individuals commented generally that TIG should be revoked.

One agency commented that the elimination of time-in-grade will allow the federal government to compete with private industry, decrease stagnation of talent, enhance succession planning efforts, and free-up management to become mentors.

Four individuals commented that employees should be rewarded (promoted) based on performance, and that the passage of time has nothing to do with an individual's contribution to his or her agency.

Four individuals commented that time-in-grade is an arbitrary and outdated time period. These individuals also believed that favoritism in promotions currently exists and that TIG removal would give managers additional flexibility to promote their staff without any additional impropriety.

Five individuals commented that time-in-grade holds back young professionals, and causes qualified individuals to leave Federal service.

One individual questioned whether a 52-week period was necessary in order to determine an individual's readiness for promotion. This individual believed that because of TIG, agencies run the risk of losing good people.

Four individuals commented that TIG elimination (or modification) is needed to improve agency mission readiness and reduce overtime cost associated with maintaining a daily workforce.

Two individuals commented that time-in-grade is a form of discrimination.

Three individuals commented that TIG penalizes hard working employees who perform well in their jobs.

One individual commented that TIG elimination would remove protectionist language which favors entrenched federal employees.

One individual commented that the time-in-grade regulation serves as a recruitment disincentive which may cause Federal agencies to miss out on hiring skilled talent. This individual also stated that TIG creates unnecessary human capital cost.

One individual suggested that TIG punishes loyal Federal employees at the expense of recent hires from the private sector.

One individual commented that the elimination of time-in-grade would afford greater flexibility for the federal managers.

Another individual questioned the ethics of applying a TIG standard to hard working employees.

One individual stated that the current time-in-grade rules limit opportunities

and incentives for internal employees, veterans, and applicants with educational qualifications.

Two individuals commented that the federal government needs to modernize the promotion processes in order to attract and retain talent; and that talented federal employees should be able to move up the grade scale at a quicker pace than the rules currently allow.

One individual believes that TIG elimination would contribute to a smarter more productive Federal workforce.

One individual believes the existence of TIG results in applicants having to accept lower-graded positions than those for which they are otherwise qualified.

One individual commented that TIG elimination would place all employees on a leveled playing field with respect to promotions.

Another individual suggested that TIG elimination would contribute to greater diversity among the Federal workforce.

Three individuals commented that TIG negatively impacts underpaid employees.

One person believes TIG rules encourage mediocrity among federal employees. This individual suggested that TIG provides a disincentive against hard work because the standards for promotion are the same for hard-working and non-hardworking employees.

One Individual commented that the TIG rules unfairly penalize employees with previous work experience who may otherwise be promoted on the basis of that experience in the absence of the 52-week requirement.

One person commented that TIG elimination makes good business sense and may support the notion that the best worker gets hired (promoted).

Amending Time-in-Grade

OPM received 9 comments on the merits of amending the time-in-grade regulation. These comments were provided by six individuals and two employee organizations.

One employee organization suggested OPM revise the time-in-grade regulation to allow for filling positions at the "target grade" for individuals that are fully qualified.

Another national employee organization suggested that OPM consider a TIG exclusion for positions directly tied to ensuring public safety.

One individual suggested that OPM develop a formula to ensure employees could get promoted after 52 weeks of Federal service.

One individual suggested OPM amend the TIG rules to allow for temporary promotion.

One individual suggested OPM conduct an overhaul of the TIG rules to better meet the needs of agencies and employee. This individual also believes the current system will induce increased numbers of federal government employees to migrate to jobs in private industry.

Two individuals suggested TIG needs to be re-evaluated and modified so that employees of the government will not be penalized for accepting lower graded positions.

One individual commented that OPM need to eliminate time-in-grade for GS-13, 14 and 15 grade levels.

Another individual suggested that OPM consider whether a 1-year TIG period provides enough time for managers to determine an employee's readiness for promotion.

Beyond the Scope

OPM received 6 comments which were beyond the scope of the merits of TIG retention, revocation, or amendment. These comments were provided by five individuals and one federal agency.

The agency suggested that OPM provide agencies with advanced notification prior to implementing TIG elimination. This notification is necessary so that agencies will have adequate time to modify merit promotion procedures, notify employee unions, and provide training before the implementation date.

The same agency commented that OPM needs to clarify, if TIG is eliminated, whether an agency will still have the option to impose a TIG requirement at its discretion.

The same agency also commented that OPM provide clear and timely policy guidance on transitioning to TIG elimination.

Two individual commented that it is detrimental that the government promote internally.

One individual objected to extending and applying TIG requirements for employees covered under the National Security Personnel System.

One individual suggested OPM revise the qualification requirement for TIG.

One individual commented on the pay-for-performance system and the importance of funding and involving Federal supervisors.

OPM carefully considered the comments we received during each of these comment periods, which reflected a variety of views. As a result, we have decided to withdraw the elimination of time-in-grade regulation that was

published in the **Federal Register** on November 7, 2008. After carefully considering all of the comments, OPM has determined that it would be more productive to consider the merits of the time-in-grade issue as part of a more comprehensive review of pay, performance, and staffing issue that OPM and the Administration are conducting in various contexts than to regulate one isolated issue in a piecemeal fashion.

This means that the TIG rules remain in effect.

Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9-19174 Filed 8-10-09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-A160

[NRC-2009-0132]

List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision 6, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of August 17, 2009, for the direct final rule that was published in the **Federal Register** on June 2, 2009 (74 FR 26285). This direct final rule amended the NRC's spent fuel storage regulations in 10 CFR 72.214 to revise the HI-STORM 100 dry cask storage system listing to include Amendment No. 6 to Certificate of Compliance (CoC) Number 1014.

DATES: *Effective Date:* The effective date of August 17, 2009, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including any comments received, may be examined at the NRC Public Document Room, Room O-1F23, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6219, e-mail Jayne.McCausland@nrc.gov.

SUPPLEMENTARY INFORMATION: On June 2, 2009 (74 FR 26285), the NRC published

a direct final rule amending its regulations at 10 CFR 72.214 to include Amendment No. 6 to CoC Number 1014. Amendment No. 6 modifies the CoC to add instrument tube tie rods used for pressurized water reactor 15x15 and 17x17 fuel lattices, for both intact and damaged fuel assemblies, to the approved contents of the multipurpose canister (MPC)-24, MPC-24E, MPC-24EF, MPC-32, and MPC-32F models; and to correct legacy editorial issues in Appendices A and B Technical Specifications. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on August 17, 2009. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 5th day of August 2009.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration.

[FR Doc. E9-19213 Filed 8-10-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2009-0162]

RIN 3150-A162

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS® System Revision 10, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of August 24, 2009, for the direct final rule that was published in the **Federal Register** on June 10, 2009 (74 FR 27423). This direct final rule amended the NRC's spent fuel storage regulations at 10 CFR 72.214 to revise the Standardized NUHOMS® System listing to include Amendment Number 10 to Certificate of Compliance (CoC) Number 1004.

DATES: *Effective Date:* The effective date of August 24, 2009, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including any comments received, may be examined at the NRC Public Document Room, Room O-1F23,

11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6219, e-mail Jayne.McCausland@nrc.gov.

SUPPLEMENTARY INFORMATION: On June 10, 2009 (74 FR 27423), the NRC published a direct final rule amending its regulations at 10 CFR 72.214 to include Amendment No. 10 to CoC Number 1004. Amendment No. 10 modifies the CoC to add two new dry shielded canisters (DSCs) designated the NUHOMS® -61BTH DSC and the NUHOMS® -32PTH1 DSC, add an alternate high-seismic option of the horizontal storage module (HSM) for storing the 32PTH1 DSC, allow storage of Westinghouse 15x15 partial length shield assemblies in the NUHOMS® -24PTH DSC, allow storage of control components in the NUHOMS® -32PT DSC, and add a new Technical Specification, which applies to Independent Spent Fuel Storage Installation sites located in a coastal marine environment, that any load bearing carbon steel component which is part of the HSM must contain at least 0.20 percent copper as an alloy addition. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on August 24, 2009. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 5th day of August 2009.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration.

[FR Doc. E9-19214 Filed 8-10-09; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 619, 620, and 621

RIN 3052-AC35

Definitions; Disclosure to Shareholders; Accounting and Reporting Requirements; Disclosure and Accounting Requirements; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Final rule; notice of effective date.